A

DIGEST OF INDIAN LAW CASES

CONTAINING

HIGH COURT REPORTS

AND

PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA, 1910,

WITH AN INDEX OF CASES,

BEING A SUPPLEMENT TO THE CONSOLIDATED DIGEST OF INDIAN LAW CASES, 1836-1909.

COMPILED UNDER THE ORDERS OF THE GOVERNMENT OF INDIA

BY

B. D. BOSE,

OF THE INNER TEMPLE, BARRISTER-AT-LAW; ADVOCATE OF THE HIGH COURT, CALCUTTA; AND EDITOR OF THE INDIAN LAW REPORTS, CALCUTTA SERIES.

CALCUTTA

SUPERINTENDENT GOVERNMENT PRINTING, INDIA

1912

Price Three Rupees.

English Price Four Shillings and Six Pence.

Agents for the sale of Books published by the Superintendent of Government Printing, India, Calcutta.

IN LONDON.

Constable & Co., 10, Orange St., Leicester Square, W.C.
Kegan Paul, Trench Trubner & Co., 68—74, Carter Lane, London, E.C.
Bernard Quaritch, 11, Grafton Street, New Bond Street, W.
P. S. King & Son, 2 and 4, Great Smith Street, Westminster.
H. S. King & Co., 65, Cornhill, and 9, Pall Mall, London.
Grindlay & Co., 54, Parliament Street, London, S.W.
T. Fisher Unwin, 1, Adelphi Terrace, London, W.C.
W. Thacker & Co., 2, Creed Lane, London, E.C.
Deighton, Bell & Co., Cambridge.
B. H. Blackwell, 50 and 51, Broad Street, Oxford.
Luzac & Co., 46, Great Russell Street, London, W.C.

ON THE CONTINENT.

Otto Harrassowitz, Leipzig.
Karl W. Hiersemann, Leipzig.
R. Friedlander & Sohn, Berlin, W. N., Carlstrasse, 11.
Ernest Leroux, 28, Rue Bonaparte, Paris.
Martinus Nijhoff, The Hague, Holland.

IN INDIA.

Thacker, Spink & Co., Calcutta and Simla.
Newman & Co., Calcutta.
R. Cambray & Co., Calcutta.
S. K. Lahiri & Co., Calcutta.
B. Bannerjee & Co., Calcutta.
The Calcutta School Book and Useful Literature Society, 1, Wellington Square, Calcutta.
Butterworth & Co. (India), Limited, Calcutta.
Higginbotham & Co., Madras.
V. Kalyanarama Iyer & Co., Madras.
G. A. Natesan & Co., Madras.
S. Murthy & Co., Madras.
Thompson & Co., Madras.
Temple & Co., Madras.
Combridge & Co., Madras.
P. R. Rama Iyer & Co., Madras.
Thacker & Co., Limited, Bombay.
A. J. Combridge & Co., Bombay.
D. B. Taraporevala, Sons & Co., Bombay.
Radhabai Atmaram Sagoon, Bombay.
Sundar Pandurang, Bombay.
Gopal Narayan & Co., Bombay.
Ram Chandra Govind & Son, Bombay.
Superintendent American Baptist Mission Press, Rangoon.
Rai Sahib M. Gulab Singh & Sons, Mufid-i-Am Press, Lahore and Calcutta.
N. B. Mathur, Superintendent, Nazair Kanun Hind Press, Allahabad.
A. Chand & Co., Punjab.
A. M. and J. Ferguson, Ceylon.
Babu S. C. Talukdar, Proprietor, Students & Co., Cooch Behar.
Manager, Education Book Depôts, Nagpur and Jubbulpore.*
Manager of the Imperial Book Depôt, 63, Chandney Chauk Street, Delhi.*
Manager, *East Coast News*, Vizagapatam.*
Manager, "The Agra Medical Hall and Co-operative Association, Limited." (Successors to A. John & Co., Agra.*)
T. K. Seetharama Aiyar, Kumbakonam.*
Superintendent, Basel Mission Book and Tract, Depository, Mangalore.*
P. Varadachary & Co., Madras.
H. Liddell, Printer, etc., 7, South Road, Allahabad.*
D. C. Anand & Sons, Peshawar.*

* Agents for sale of the Legislative Department publications.

PREFACE.

THIS volume is published as a supplement to the new Consolidated Digest. 1836-1909 (in the press). It contains the cases published in the four series of the Indian Law Reports. the Law Reports Indian Appeals, and the Calcutta Weekly Notes, for the year 1910.

The different sets of Law Reports in which the same cases have been published, are specifically noted in the Table of Cases.

For easy reference, a number of words and phrases, which are expounded in the judgments digested in this volume, are given in a separate list, in alphabetical order, under the heading "Words and Phrases."

B. D. BOSE.

HIGH COURT, CALCUTTA:
The 28th December 1911.

CONTENTS.

HIGH COURT, CALCUTTA, 1910.

CHIEF JUSTICE:

The Hon'ble Sir Lawrence Hugh Jenkins, Kt., K.C.I.E.
„ Mr. Richard Harington (*Acting Chief Justice*).

PUISNE JUDGES:

The Hon'ble Mr Justice R. Harington
„ „ „ C. M. W. Brett, C.S.I.
„ „ „ H. L. Stephen.
„ „ „ J. G. Woodroffe
„ „ „ A. Mookerjee, C.S.I.
„ „ „ C. P. Caspersz.
„ „ „ H. Holmwood.
„ „ „ C. W. Chitty.
„ „ „ E. E. Fletcher
„ „ „ S. Sharf-ud-din
„ „ „ H. R. H. Coxe.
„ „ „ H. W. C. Carnduff, C.I.E.
„ „ „ L. M. Doss (*Retired Oct. 13, 1910*).
„ „ „ D. Chatterjee
„ „ „ W. Teunon (*Offg.*)
„ „ „ T. W. Richardson (*Offg.*)
„ „ „ L. P. E. Pugh (*Offg.*)
„ „ „ W. H. H. Vincent (*Offg.*)
„ „ „ N. R. Chatterjea

ADVOCATE GENERAL:

The Hon'ble Mr G. H. B. Kenrick, K.C.

STANDING COUNSEL:

The Hon'ble Mr Syed Ali Imam (*Retired*)
„ „ B. C. Mitter

HIGH COURT, BOMBAY, 1910.

CHIEF JUSTICE:

The Hon'ble Sir Basil Scott, Kt.

PUISNE JUDGES:

The Hon'ble Mr. L. P. Russell
„ Sir Narayanrao G. Chandavarkar, Kt.
„ Mr. S. L. Batchelor
„ „ D. D. Davar.
„ „ F. C. O. Beaman.
„ „ J. J. Heaton.
„ „ N. C. Macleod (*Additional*)
„ „ R. R. Knight (*Offg.*)
„ „ L. J. Robertson (*Offg.*)
„ „ G. S. Rao (*Offg.*)

HIGH COURT, BOMBAY, 1910—*concld.*

ADVOCATE GENERAL

The Hon'ble Mr. T J. Strangman.
" " M. R. Jardine (*Offg.*)

LEGAL REMEMBRANCER:

Mr. L. C. Crump.

HIGH COURT, MADRAS, 1910.

CHIEF JUSTICE:

The Hon'ble Sir Charles Arnold White, Kt.

PUISNE JUDGES:

The Hon'ble Sir R. S. Benson, Kt.
" Mr J. E. P. Wallis
" " L. C. Miller.
" " J. H. Munro.
" " C. Sankaran Nair.
" " Abdur Rahim.
" " V. Krishnaswami Ayyar.
" " W. B. Ayling (*Offg*)

ADVOCATE GENERAL:

The Hon'ble Mr. P. S. Sivaswami Ayiar.

HIGH COURT, ALLAHABAD, 1910.

CHIEF JUSTICE:

The Hon'ble Sir John Stanley, Kt., K.C.

PUISNE JUDGES:

The Hon'ble Sir G. E Knox, Kt.
" Mr. P. C. Banerji.
" " H. G. Richards.
" " Saiyid Karamat Husain.
" " H. D. Griffin.
" " W. Tudball.
" " T. C. Piggott (*Offg.*)
" " E. M. DesC. Chamier (*Offg.*)

MEMBERS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, 1910.

LORD LOREBURN, LORD CHANCELLOR.
EARL OF HALSBURY.
VISCOUNT MORLEY OF BLACKBURN, LORD PRESIDENT.
MARQUIS OF LONDONDERRY, EARL OF ROSEBERY, EARL OF CREWE, VISCOUNT WOLVERHAMPTON, } EX-LORD PRESIDENTS.
LORD ASHBOURNE.
LORD MACNAGHTEN.
LORD JAMES OF HEREFORD.
LORD LINDLEY.
LORD ALVERSTONE.
LORD DUNEDIN.
LORD ATKINSON.
LORD COLLINS.
LORD SHAW OF DUNFERMLINE.
LORD GORELL.
LORD DE VILLIERS.
LORD ROBSON.
SIR EDWARD FRY.
SIR SAMUEL WAY, *Bart.*
SIR FORD NORTH.
SIR SAMUEL GRIFFITH.
SIR ARTHUR WILSON.
SIR HENRI ELZEAR TASCHEREAU.
SIR ALFRED WILLS.
SIR JOHN EDGE.
SIR EDMUND BARTON.
SYED AMEER ALI.

And others who being present or past Lords Justices of Appeal are members of the Privy Council (44 Vict., c. 3), or who being members of the Privy Council hold or have held high Judicial offices (50 & 51 Vict., c. 70).

TABLE OF REPORTS DIGESTED.

Reports.	Period.	Number of volumes.	In what Court.	Abbreviations
Indian Law Reports.—				
Calcutta Series, Vol 37.	1910	1	High Court, Calcutta, and Privy Council.	I L. R Calc.
Bombay Series, Vol 34.	1910	1	High Court, Bombay, and Privy Council	I L. R. Bom
Madras Series, Vol 33.	1910	1	High Court, Madras, and Privy Council	I. L R. Mad.
Allahabad Series, Vol 32.	1910	1	High Court, Allahabad, and Privy Council	I L R. All.
Calcutta Weekly Notes, Vol. 14.	1909-10	1	High Court, Calcutta, and Privy Council	C. W. N.
Law Reports, Indian Appeals, Vol. 37.	1909-10	1	Privy Council . . .	L. R. I. A.
		6		

1910.

TABLE

OF

HEADINGS, SUB-HEADINGS AND CROSS-REFERENCES IN THE DIGEST.

The headings and sub-headings, under which the cases are arranged, are printed in this table in capitals, the headings in black type and the sub-headings in small capitals. The cross-references are printed in ordinary type.

TABLE

OF

CASES IN THE DIGEST.

ANNUAL DIGEST

OF

THE HIGH COURT REPORTS

AND OF

THE PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA,

1910.

A

ACQUITTAL.

1. ——— **Previous acquittal**—*Acquittal under s 182 of the Penal Code—Subsequent complaint under s. 500, by the person defamed, in respect of the same statement—Subsequent prosecution not barred—Criminal Procedure Code (Act V of 1898), s. 403.* An acquittal under s 182 of the Penal Code in respect of false information contained in a petition to the manager of an estate is no bar to a subsequent prosecution for defamation under s 500 of the Penal Code on the same statements. *Sharbekhan Gohain* v. *Emperor, 10 C W. N 85,* distinguished. RAMSEBAK LAL *v.* MUNESWAR SINGH (1910) **I. L. R. 37 Calc. 604**

2. ——— *Previous acquittal, plea of—Acquittal of some accused charged with rioting, grievous hurt and murder—Liability of others to be tried for the same offences—Prosecution story found to be false as to the grievous hurt and murder—Criminal Procedure Code (Act V of 1898), s. 403* An acquittal of some of the accused on charges of rioting armed with deadly weapons, grievous hurt and murder is no bar, under s 403 of the Criminal Procedure Code, to the trial of others concerned in the same offences Where the Sessions Judge was of opinion, at the original trial, that the prosecution story as to the manner in which the deceased met his death did not represent the truth and acquitted the accused, though he did not disbelieve the fact of a rioting having occurred, while one of the Assessors believed the whole story :—*Held,* that the High Court would not interfere with a pending prosecution against others for the same offences. *Bishun Das Ghosh* v. *King-Emperor, 7 C. W. N. 493,* distinguished. KOKAI SARDAR *v.* MEHER KHAN 1910) . . . **I. L. R. 37 Calc. 680**

ACT.

——— **1840—V.**

See OATHS ACT, 1840.

——— **1841—XIX.**

See SUCCESSION (PROPERTY PROTECTION) ACT

——— **1856—XV.**

See HINDU WIDOWS' RE-MARRIAGE ACT.

——— **1859—VIII.**

See CIVIL PROCEDURE CODE, 1859.

——— **1860—XLV.**

See PENAL CODE

——— **1863—XX.**

See RELIGIOUS ENDOWMENTS ACT.

——— **1864—II.**

See ADEN ACT.

——— **XVII.**

See OFFICIAL TRUSTEE'S ACT.

ACT—*contd.*

——— **1865—X.**

See SUCCESSION ACT.

——— **1866—XXVII.**

See TRUSTEES ACT.

——— **XXVIII.**

See TRUSTEES' AND MORTGAGEES' POWERS ACT

——— **1869—IV.**

See DIVORCE ACT.

——— **1870—VII.**

See COURT-FEES ACT.

——— **XXI.**

See HINDU WILLS ACT.

——— **1871—XXXIII.**

See PENSIONS ACT.

——— **1872—I.**

See EVIDENCE ACT.

——— **IV.**

See PUNJAB LAWS ACT.

——— **IX.**

See CONTRACT ACT.

——— **1873—X.**

See OATHS ACT, 1873.

——— **1874—II.**

See ADMINISTRATOR-GENERAL'S ACT.

——— **1877—I.**

See SPECIFIC RELIEF ACT.

——— **III.**

See REGISTRATION ACT.

——— **XV.**

See LIMITATION ACT, 1877.

——— **1878—I.**

See OPIUM ACT.

——— **XI.**

See ARMS ACT.

——— **1879—XVII.**

See DEKKHAN AGRICULTURISTS' RELIEF ACT.

——— **XVIII.**

See LEGAL PRACTITIONERS ACT.

——— **1881—V.**

See PROBATE AND ADMINISTRATION ACT.

ADEN ACT (II OF 1864)—*concld.*

Code (Act XIV of 1882). The judgment dismissing the appeal was read out to the plaintiff on the 7th October following, when she attended the Court. The plaintiff, thereupon, preferred an application for revision to the High Court praying that the order dismissing the appeal might be quashed and that the Resident be required to state a case A question having arisen as to whether the High Court had jurisdiction to interfere in revision with any order passed by the Resident in the exercise of his Civil jurisdiction under the Aden Act (II of 1864) : *Held*, that with regard to questions which might arise regarding cases to be stated by the Resident for the decision of the High Court under the provisions of s 8 of the Aden Act (II of 1864) the Resident's Court is subordinate to the High Court. Under s 15 of the Aden Act (II of 1864) as the Court of the Resident is to be guided by the spirit and principle of the laws and regulations in force in the Presidency of Bombay and administered in the Courts of that Presidency not established by Royal Charter and in the High Court in the exercise of its jurisdiction as a Court of Appeal from those Courts, the provisions of the Suits Valuation Act (VII of 1887) are 'the law for the time being for the valuation of claims' in the Courts of the Resident of Aden. *Held*, further, that the plaintiff's claim being valued at ₹130 according to the law for the valuation of claims for the time being in force and according to the rulings of the Bombay High Court, it did not fulfil the requirements of s. 8 of the Aden Act (II of 1864) so as to give the plaintiff a right to demand the statement of the case upon any question of fact or law arising in the suit RHIMBAI JAMALBHOY *v.* MARIAM BINTE ABDUL (1909) **I. L. R. 34 Bom. 267**

AD INTERIM PROTECTION.

See INSOLVENCY . **14 C. W. N. 586**

ADJUSTMENT.

See CIVIL PROCEDURE CODE (ACT XIV of 1882), s. 258 **I. L. R. 34 Bom. 575**

ADMINISTRATION SUIT.

See CIVIL PROCEDURE CODE, 1908, s. 33 o. XX, rr. 6, 7 **I. L. R. 34 Bom. 182**

——— **Parties**—*Practice—Civil Procedure Code (Act V of 1908), o. 1, r. 8—Suit filed by plaintiff representing body of creditors—Application to be made party—Administration suit.* Where a suit has been filed on behalf of a body of persons and an individual member of that body applies to be made a party, he must show that his interests will be seriously prejudiced if he is not allowed to come in. He must show that the conduct of the suit is not in proper hands, or that action prejudicial to his interest is being taken by those who purport to represent him. In an administration suit it is extremely undesirable that individual creditors should be added as parties unless they show some very strong reason. The willingness

ADMINISTRATION SUIT—*concld.*

of the applicants to bear their own costs does not counterbalance the delay caused by the addition of a party and the consequent increase in the costs of other parties. VASSONJI TRICUMJI & Co. *v.* ESMAILBHAI SHIVJI (1909) **I. L. R. 34 Bom. 420**

ADMINISTRATOR-GENERAL'S ACT (II OF 1874).

——— **s. 36.**

See CERTIFICATE, ADMINISTRATOR-GENERAL'S . **I. L. R. 34 Bom. 506**

See HINDU WILLS ACT. **I. L. R. 34 Bom. 506**

See PROBATE . **I. L. R. 34 Bom. 506**

See SUCCESSION ACT, s 187. **I. L. R. 34 Bom. 506**

See WILL . **I. L. R. 34 Bom. 506**

——— *Hindu Wills Act (XXI of 1870), ss 2 and 5—Indian Succession Act (X of 1865), s. 187—Administrator-General's Act (II of 1874), s. 36—Will made in Bombay—Property worth less than ₹1,000—Probate—Administrator-General's certificate.* A Will made in Bombay is subject to the provisions of the Hindu Wills Act (XXI of 1870) and a person claiming as a legatee under the will is not entitled to sue without taking out probate as he would be bound by s. 187 of the Indian Succession Act (X of 1865) which is incorporated in the Hindu Wills Act (XXI of 1870) The provision of the Administrator-General's Act (II of 1874) is not affected by the incorporation in the Hindu Wills Act (XXI of 1870) of s. 187 of the Indian Succession Act (X of 1865). NARAYAN SHRIDHAR *v.* PANDURANG BAPUJI (1910) . . **I. L. R. 34 Bom. 506**

ADMISSION.

——— **to police—**

See JURY, RIGHT OF TRIAL BY. **I. L. R. 37 Calc. 467**

——— *What constitutes admission.* To constitute an admission, the document need not be written by the party against whom it is used : it is sufficient if it is found in his possession, and his conduct thereto creates an inference that he was aware of its contents and admitted their accuracy; but, unless this is done, the document cannot be used against him as proof of its contents. What conduct would properly give rise to such inference depends on the facts of each case. The mere fact of possession of letters is not of much value, unless it is shown that their contents were recognized and adopted by the replies elicited or the conduct inspired by them. BARINDRA KUMAR GHOSE *v.* EMPEROR (1909) **I. L. R. 37 Calc. 467**

ADOPTION.

See HINDU LAW—ADOPTION. **I. L. R. 32 All. 247**

——— **Valuation of suit for**—*Suit to set aside Adoption—Munsif, jurisdiction of—*

ADOPTION—*concld.*

Forum—Practice. According to a long-standing practice a suit to set aside an adoption is, for the purposes of jurisdiction, incapable of valuation: and it is competent to the plaintiff in such a suit to value the relief claimed and that valuation determines the forum to decide the suit. *Aklemannessa Bibi* v. *Mahomed Hatem*, *I L R 31 Calc 849*, commented on. *Jan Mahomed Mandal* v. *Mashar Bibi*, *I. L R. 34 Calc. 352*, referred to. PRAHLAD CHANDRA DAS *v.* DWARKA NATH GHOSE (1910) . **I. L. R. 37 Calc. 860**

ADVERSE POSSESSION.

See GRANT . . **I. L. R. 37 Calc. 674**

See HINDU LAW . **I. L. R. 33 Mad. 366**

See LIMITATION . **I. L. R. 37 Calc. 885**

See OCCUPANCY HOLDING **14 C. W. N. 68**

1. ———— **Adverse possession of Government against Court of Wards representing private persons**—*Court of Wards, position of—Chur land, suit to recover—Gradual formation—Proof that any portion formed within period of limitation—Onus.* The Government and the Court of Wards are not identical bodies, nor can the latter be regarded as merely a department of the former. The latter is a statutory body in the mere fact that in this province the Board of Revenue as the Court of Wards does not make the possession by Government of newly formed *chur* land during the time the claimants' property was under the direction of the Court of Wards possession by the latter on behalf of the claimants: *Held*, on the evidence, that Government was in adverse possession of the disputed land as against the Court of Wards representing the claimants *Chowdhree Sheoraj Singh* v. *The Collector of Moradabad*, *2 N. W. P. 379*, approved. In a suit for recovery of possession of *chur* land, which commenced forming more than 12 years before the suit, the onus is on the plaintiffs to prove that any portion of the *chur* formed within 12 years of the suit. *Kumar Ranjit Singh* v. *Schoene*, *4 C. L. R. 319*, referred to. GULU DAS KUNDU CHOWDHURY *v.* KUMAR BASANTA KUMAR ROY (1909) . . **14 C. W. N. 317**

2. ———— **Suit for profits**—*Limitation—Profits collected by co-sharers—Suit by other co-sharers to recover their shares.* Co-sharers who collect profits for other co-sharers are in a position similar to that of a lambardar. Where no adverse title has been set up, the mere fact that a co-sharer plaintiff has not received profits for more than twelve years before suit will not bar his claim. *Raj Bahadur* v. *Bharat Singh*, *I. L. R. 27 All. 348*, and *Mihin Lal* v. *Badri Prasad*, *I. L. R 27 All. 436*, followed. HARACHARAN *v.* BINDU (1910) . . . **I. L. R. 32 All. 389**

3. ———— **Ejectment**—*Saranjam—Inam—Claim to hold as Mirasi tenant—Limited interest.* Where in an ejectment suit by an Inamdar it was shown that the defendants, for more than twelve years before the suit, openly asserted their claim to hold as permanent Mirasi tenants: *Held*, that the defendants had acquired a title to the limited interest claimed by them and could not be ejected. TRIMBAK RAMCHANDRA *v* SHEKH GULAM ZILANI (1909) . . . **I. L. R. 34 Bom. 329**

4. ———— **Title against Crown**—*Burden of proof—What facts prove adverse possession—Entry as poramboke not sufficient to prove title of Crown* In mirasi tracts, the gathering of wild flowers and fruits from poramboke lands and the gathering of fish from small tanks will not indicate ownership, as such acts are permitted by Government. It is otherwise where large sums are spent on tanks by mirasidars in clearing silt and in constructing masonry dams. Such acts are indicative of ownership and when they are proved to have been done for 30 or 40 years, the presumption will be that they have been done for more than the statutory period and the burden will be on the Crown to explain such acts and prove possession within the statutory period. Mere entry as poramboke in the *pymash* and settlement-registers is insufficient to prove the title of Government, without proof of acts of ownership VENCATARAMA IYER *v.* SECRETARY OF STATE FOR INDIA (1909) **I. L. R. 33 Mad. 362**

ADVERSE RIGHTS IN TWO CAPACITIES.

See LANDLORD AND TENANT. **I. L. R. 37 Calc. 709**

ADVOCACY.

———— The kind of advocacy, obtaining in India, by which the advocate on each side seeks to force his opponent to produce his own client as a witness in order that he may have an opportunity of cross-examining that client, was condemned as one that must embarrass and perplex judicial investigation and as being unworthy of a high toned or reputable system of advocacy. LAL KUNWAR *v.* CHIRANJI LAL (1909) **14 C. W. N. 285**

ADVOCATE-GENERAL.

———— **sanction of—**

See PUBLIC CHARITIES. **14 C. W. N. 932**

AFFIDAVIT.

1. ———— **Practice**—*Grounds of belief—Civil Procedure Code (Act V of 1908), order XIX, rule 3—Jurisdiction—Rehearing.* The provisions of order XIX, rule 3 of the Code of Civil Procedure must be strictly observed; every affidavit should clearly express how much is a statement of the deponent's knowledge and how much is a statement of his belief, and the grounds of belief must be stated with sufficient particularity. The Court has inherent jurisdiction to rehear a matter before the order passed by the Court at a previous hearing

AFFIDAVIT—*concld.*

has been perfected. PADMABATI DASI *v.* RASIK LAL DHAR (1909) . **I. L. R. 37 Calc. 259**

2. ——— **Scandalous matter in pleadings**—*Civil Procedure Code (Act V of 1908), order XIX, rule 3—Statements on information and belief, when source of information not indicated if admissible—Allegations of dishonesty, not relevant to relief prayed.* Scandalous matter should be avoided in pleadings, and if a statement of this character is inserted in an affidavit, it may be ordered to be taken off the file or the particular passage may be directed to be expunged. The Court may take action of its own motion or upon the application of the aggrieved party. Allegations of dishonesty are scandalous but they cannot be treated as such if they are relevant to the issue. *Fisher* v. *Owen, 8 Ch. D. 645, 653, Millington* v *Loring, 6 Q B D. 196,* referred to "If in future an affidavit is filed in which allegations are made on belief without a statement on the grounds for such belief, the Court will be prepared, if objection is taken, to enforce the strict rule laid down in order XIX, rule 3 of the Civil Procedure Code." *In re Young Manufacturing Co. [1900], 2 Ch. 753,* referred to. GOBIND MOHON DAS *v.* KUNJA BEHARI DAS (1909) **14 C. W. N. 153**

AGENT.

——— **acceptance of bribe or commission by—**

See PRINCIPAL AND AGENT.
I. L. R. 37 Calc. 81

AGRADANI BRAHMIN.

See HINDU LAW—GIFTS
14 C. W. N. 1005

AGRA TENANCY ACT (II OF 1901).

——— **ss. 19, 20**—*Contract Act (IX of 1872), s. 65—Usufructuary mortgage of sir lands—Possession not delivered to mortgagee—Suit to recover possession not maintainable.* To secure repayment of money advanced to them by the plaintiff the defendants executed a usufructuary mortgage of certain *sir* land, but did not give possession. The mortgagee sued to recover possession of the land or to realize the mortgage debt by sale. *Held,* that neither relief was open to him: but he could treat the mortgagees as exproprietary tenants and get rent assessed against them. *Murlidhar* v. *Pem Raj, I. L. R. 22 All. 205,* followed. *Jujhhar Laldas* v. *Nagji Gulab, 11 Bom. L. R. 693,* distinguished. DIPAN RAI *v.* RAM KHELAWAN (1910) . **I. L. R. 32 All. 383**

——— **s. 20**—*Occupancy holding—Mortgage of occupancy holding executed before the Agra Tenancy Act came into force—Act (Local) No. I of 1904 (General Clauses Act), s 6.* A mortgage of an occupancy tenancy executed prior to the coming into operation of the Agra Tenancy Act is a perfectly valid transaction, and is not affected by the subsequent passing of that Act.

AGRA TENANCY ACT (II OF 1901)—*contd.*

——— **s. 20**—*concld.*

Babu Lal v. *Ram Kali, All Weekly Notes (1906) 28,* referred to. *Harnandan Rai* v. *Nakchedi Rai, All. Weekly Notes (1906) 302,* distinguished. RAM PARGAS UPADHIA *v.* SUBA UPADHIA (1910)
I. L. R. 32 All. 628

——— **s. 22**—*Occupancy holding—Succession—Hindu Law.* An occupancy tenant died before the coming into operation of the Agra Tenancy Act leaving two daughters, one indigent and the other rich, and was succeeded by the former. After the Tenancy Act came into operation the indigent daughter died. *Held,* that the rich daughter was entitled to inherit the holding upon the death of her sister in preference to the latter's son; her right, which had accrued on the death of her father, having been merely postponed during the lifetime of the indigent daughter. DULARI *v.* MUL CHAND (1910) . **I. L. R. 32 All. 314**

——— **ss. 74 to 76.**—"*Crops or other products*"—*Jasmine and bela plants. Held,* that jasmine and *bela* plants come under the category of crops or other products within the meaning of ss. 74, 75 and 76 of the Agra Tenancy Act, 1901. *Sheo Pershad Tiwary* v. *Mussumat Moleema Beebee, N.-W. P. H. C. Rep 108,* and *Abdul Baki* v. *Mathura Prasad, All Weekly Notes (1893) 24,* referred to. RAM PRASAD BHAGAL *v.* SUBA RAI (1910) . . . . **I. L. R. 32 All. 458**

——— **ss. 176, 177**—*Civil Procedure Code, 1882, ss 2 and 102—Dismissal of suit for default—Order—Decree—Appeal.* An order of a Rent Court dismissing a suit for default of appearance by the plaintiff does not amount to a decree, and consequently such order when passed by an Assistant Collector of the first class is not appealable. *Zohra* v. *Mangu Lal, I. L. R 18 All. 768,* followed. KARANPAL SINGH *v.* BHIMA MAL (1910) . . . **I. L. R. 32 All. 373**

——— **s. 199**—*Determination by Revenue Court of question of proprietary title—Subsequent suit in Civil Court—Res judicata. Held* that the application of the principle that the decision of a question of title by a revenue court, under s. 199 of the Agra Tenancy Act, 1901, constitutes a *res judicata* in respect of a subsequent suit *in pari materia* brought in a Civil Court, is not affected by the fact that the Civil Court suit may be beyond the pecuniary limits of the jurisdiction of the Revenue Court. SHAHZADE SINGH *v.* MUHAMMAD MEHDI ALI KHAN (1909)
I. L. R. 32 All. 8

——— **s. 201 (3)**—*Evidence Act (I of 1872), s. 4—Evidence—Presumption—Record of plaintiff's name as a co-sharer*—*Held* by STANLEY, *C. J.*, and GRIFFIN, *J.* (TUDBALL, *J.*, *dissentiente*), that the presumption enjoined by cl. (3) of s. 201 of the Agra Tenancy Act, 1901, is not a conclusive but merely a rebuttable presumption. *Dil Kunwar* v. *Udai Ram, I. L. R. 29 All. 148, Bechan Singh* v. *Karan Singh, I. L. R. 30 All. 447, Dhanka*

AGRA TENANCY ACT (II OF 1901) —*concld.*

——— s. 201 (3)—*concld.*

v. *Umrao Singh, All. Weekly Notes (1907) 43, Banwari Lal* v. *Nadar, I. L. R. 29 All 158, Govind* v. *Saheb Ram, I. L. R 31 All 257, and Bhawani Singh* v. *Dilawar Khan, I. L. R. 31 All. 253,* referred to. *Per* TUDBALL, *J.* The presumption mentioned in cl. 3, s. 201 of the Agra Tenancy Act, is one which is rebuttable only in a Civil Court and not in a Revenue Court. WARIS ALI KHAN *v.* PARSOTAM NARAIN (1910) **I. L. R. 32 All. 427**

AGREEMENT.

——— by executor—

See WILL . . **14 C. W. N. 967**

——— suit to enforce—

See MAHOMEDAN LAW. **I. L. R. 32 All. 410**

——— to lease—

See SPECIFIC PERFORMANCE **14 C. W. N. 65**

——— to supply funds to carry on suit—

See CHAMPERTY . **14 C. W. N. 191**

AGRICULTURIST.

See DEKKHAN AGRICULTURISTS' RELIEF ACT, 1879, s. 2 **I. L. R. 34 Bom. 161**

ALIENATION.

——— By widow—*Consent by the body of reversioners—Transfer for legal necessity—Transaction for consideration—Gift—Partial relinquishment by widow—Hindu Law* The general principle which prohibits a Hindu widow's alienation of immoveable property otherwise than for legal necessity is relaxed in cases where the consent of the whole body of persons constituting the next reversion has been obtained. The reason for the relaxation is referred to the principle that the consent of the person who would be interested in disputing the transfer affords good evidence that the transfer was in fact made for justifying cause, that is, for legal necessity. *Bajrangi Singh* v. *Manokarnika Bakhsh Singh, I. L. R 30 All. 1,* and *Vinayak* v. *Govind, I. L. R. 25 Bom. 129,* followed The operation of the principle is ordinarily limited to transfers for consideration and cannot be extended to voluntary transfers by way of gift where there is no room for the theory of legal necessity It should not be extended to cases where the widow has made only a partial relinquishment of the estate. PILU *v.* BABAJI (1909) **I. L. R. 34 Bom 165**

AMENDMENT OF DECREE.

See DECREE . **I. L. R. 32 All. 295**

AMENDMENT OF PLAINT.

See LIMITATION ACT, 1877, ss. 22, 28, **I. L. R. 34 Bom. 9**

1. ——— *Application for leave to amend plaint after arguments heard in appeal disallowed.* After arguments in appeal have been heard the Court will not allow an amendment of the plaint so as to convert a suit of one character into a suit of a substantially different character. BAYABAI *v.* HAJI NOOR MAHOMED (1908) . . . **I. L. R. 34 Bom. 244**

2. ——— *Civil Procedure. Code (Act XIV of 1882)—Amendment of plaint by referring to document not included in list of documents relied on* At the hearing of a suit brought by the plaintiff for the recovery of a sum due at the foot of an account the defendant raised a plea of limitation The plaintiff thereupon applied for leave to amend his plaint by setting out an acknowledgment in writing signed by the defendant within the period of limitation The lower Court refused the application On appeal:—*Held,* that the amendment should have been allowed. GUNNAJI BHAWAJI *v.* MAKANJI KHOOSALCHAND (1909) **I. L. R. 34 Bom. 250**

AMMUNITION.

——— Empty cartridge-cases—*Arms Act (XI of 1878), s. 4—Definition—Held,* that empty cartridge cases are ammunition within the meaning of s. 4 of the Indian Arms Act, 1878. *King-Emperor* v. *Ibrahim, 7 Bom. L. R. 474,* followed. EMPEROR *v.* BALDEO SINGH (1909) **I. L. R. 32 All. 152**

ANALOGOUS APPEALS.

See PRACTICE . **14 C. W. N. 352**

ANVADHEYA STRIDHAN.

See HINDU LAW—STRIDHAN. **I. L. R. 34 Bom. 553**

See HINDU LAW—SUCCESSION **I. L. R. 34 Bom. 385**

APPEAL.

See AGRA TENANCY ACT (II OF 1901), ss. 176 AND 177 . **I. L. R. 32 All. 373**

See BENGAL, N.-W. P. AND ASSAM CIVIL COURTS ACT (XII OF 1887), s. 21. **I. L. R. 32 All. 222**

See CIVIL PROCEDURE CODE, 1908, s. 33, o. XX, RR 6, 7 **I. L. R. 34 Bom. 182**

See CIVIL PROCEDURE CODE (ACT V OF 1908), SS 47, 96, 104 (*b*), 135 (2). **I. L. R. 32 All. 3**

See COURT FEES ACT (VII OF 1870), s. 7; SCH. II, CLS. 3, 4 **I. L. R. 32 All. 517**

APPEAL—*contd.*

See JURISDICTION **I. L. R. 34 Bom. 267**

See LETTERS PATENT. **I L. R. 34 Bom. 1**

See PARTITION . **I. L. R. 32 All. 225**

See PROVINCIAL SMALL CAUSE COURTS ACT, 1887, ss. 16, 27, 32, SCH. II, CLS. (2) AND (3) . **I. L. R. 34 Bom. 171**

See RECEIVER . **14 C. W. N. 183**

See U. P. LAND REVENUE ACT (III OF 1901), ss. 111, 112. **I. L. R. 32 All. 523**

——— abatement of—

See CIVIL PROCEDURE CODE, 1882, s. 230. **I. L. R. 32 All. 136**

See CIVIL PROCEDURE CODE, 1882, s 368. **I. L. R. 32 All. 301**

——— valuation of—

See VALUATION OF APPEAL.

1. REMAND.

——— *Appeal from order dismissing suit under s. 102, Civil Procedure Code (Act XIV of 1882)—Suit in which two distinct claims were made—Claim to recover money paid to release attachment disallowed—Claim for damages for wrongful attachment withdrawn—Non-appearance of plaintiff—Improper procedure in dismissing suit for default—Remand.* The plaintiff (appellant) made two claims, one for money paid into Court to release from attachment property which he alleged he had purchased, but which had been attached as belonging to the Delhi Cotton Mills Company against which the defendant (respondent) held a decree : and the other for damages for the wrongful attachment. As to the former claim, the District Judge ruled "that the payment was entirely voluntary and for plaintiff's own interests, and that his remedy is under ss. 69 and 70 of the Contract Act against the Delhi Cotton Mills, and I dismiss the case for recovery with costs The case will proceed on the question of damages for illegal attachment." Evidence was proceeded with on the claim for damages, and after unsuccessfully petitioning that a decree might be drawn up in respect of the dismissal of his claim to the money paid into Court, and for leave to withdraw his claim for damages under s. 373 of the Civil Procedure Code (Act XIV of 1882), with liberty to bring a fresh suit, the plaintiff unconditionally withdrew from the claim for damages, but not from the claim to the recovery of the money paid. Subsequently, the defendant proceeded to give evidence upon the issues raised in the case, and eventually, the plaintiff not appearing, the District Judge dismissed the whole case for default under s. 102 of the Code. On appeal to the Chief Court, the majority of a Full Bench of that Court decided that no appeal lay from an order dismissing a suit under s. 102, and the appeal was consequently dismissed : *Held*, by the Judicial Committee,

APPEAL—*contd.*

1. REMAND—*concld.*

that after the decision of the District Judge adverse to the plaintiff on the claim to recover the money paid, which left no question as to that claim open in the Court of first instance, and the abandonment by the plaintiff of the claim to damages, there remained nothing in substance to be tried ; and that the case was one not proper to be dealt with under s. 102. Without deciding (as being, therefore, unnecessary) the question whether an appeal would lie against a dismissal regularly made under that section, their Lordships remanded the case to the Chief Court to decide the appeal on its merits. KANHYA LAL *v* THE NATIONAL BANK OF INDIA (1910) . . **I. L. R. 37 Calc. 426**

2. RIGHT OF APPEAL.

——— Review — *Civil Procedure Code (Act XIV of 1882), ss. 622, 623, 624, 626—Review—"Sufficient reason"—Admission by defendant after suit dismissed that case true—Review upon evidence of admission—Appeal—Revision—Material irregularity.* Where an order dismissing a suit was reviewed on the ground of a subsequent admission by the defendant that the plaintiff's case was true, and the suit was decreed : *Held*, that no appeal lay from the order admitting the review as it was not in contravention of s. 624 or 626, Civil Procedure Code. *Munniram Chowdhry* v. *Bishen Perkash Narain, I. L. R. 24 Calc. 878 ; The Bombay and Persia Steam Navigation Co.* v. *S. S. "Zuari," I. L. R 12 Bom. 171*, followed But in admitting the review on that ground the Court acted with material irregularity in the exercise on its jurisdiction within the meaning of s. 622, Civil Procedure Code. A ground for review must be something which existed at the date of the decree and not a subsequent event. *Kotaghiri Venkata Subbamma Rao* v. *Vallanki Venkatarama Rao, I. L. R. 24 Mad. 1*, followed. GOLAM ALI JAMADAR *v.* ABDUL KARIM SIRKAR (1909) . . . . **14 C. W. N. 244**

3. VALUATION OF SUIT.

——— *Court-fees Act (VII of 1870), s. 12—Decision of trying Court as to valuation of suit, if open to question in appeal against decree dismissing suit for non-payment of additional Court-fee on day fixed—Civil Procedure Code (Act XIV of 1882), s. 2—Valuation by plaintiff if determines forum of appeal.* Where the Court in which a suit was instituted held that it had been undervalued and directed the plaintiff to pay additional Court-fees by a certain date, but the plaintiff having failed to do so the suit was dismissed : *Held*, that an appeal lay against the decree dismissing the suit, and in that appeal the decision of the first Court regarding the valuation of the suit could be questioned, s. 12 of the Court-fees Act notwithstanding. *Omrao Mirza* v. *Mary Jones, 12 C. L R. 148, H. C. Studd* v. *Mati Mahto, I. L. R. 28 Calc. 334*, relied on. *Held*, further, that

APPEAL—*concld.*

3. VALUATION OF SUIT—*concld.*

the appeal lay to the Court of the Judicial Commissioner, although the Subordinate Judge valued the suit at over R5,000 inasmuch as the plaintiff throughout contended that the value was below R5,000 as stated in the plaint. PROKASH CHANDRA SARKAR *v* BISHAMBHAR NATH SAHI (1909) **14 C. W. N. 343**

APPELLATE COURT.

——— direction by, to add parties—

See REMAND . **I. L. R. 37 Calc. 171**

ARABLE LAND.

See ASSESSMENT, EXEMPTION FROM. **I. L. R. 37 Calc. 697**

ARBITRATION.

See CIVIL PROCEDURE CODE, 1882, SS 13, 525 AND 526 . **I. L. R. 32 All. 484**

See CIVIL PROCEDURE CODE, 1908, S 29, SCH. II . . **I. L. R. 32 All. 503**

See CIVIL PROCEDURE CODE, 1908, SCH. II, S. 1 . **I. L. R. 32 All. 657**

See JURISDICTION **I. L. R. 34 Bom. 13**

See PARTNERSHIP . **14 C. W. N. 1106**

1. REFERENCE TO ARBITRATION.

1. ——— *Letters Patent, 1865, cl 15—Order of Judge refusing to decide whether arbitrators are going beyond scope of their authority—"Judgment"—Appeal—Construction of submission to arbitration—Insurance against fire—Liability of Company for further loss* An order of a Judge dismissing a petition to revoke a submission to arbitration on the ground that the arbitrators are going beyond the scope of the reference is a "judgment" within the meaning of clause 15 of the Letters Patent and as such is appealable. Such an order compels a party to submit to the jurisdiction of arbitrators though he complains that no such jurisdiction exists It decides a question of right, namely, whether or not he is by the terms of reference to arbitration deprived of his right at common law to have the dispute decided in the ordinary way in a Court of law. It goes to jurisdiction and is not passed as an exercise of discretion. *Held, per* CHANDAVARKAR, *J.* :—When a submission to arbitration is being construed, a cardinal principle to be applied is that by a submission to arbitration a party deprives himself of the right at common law to have the dispute to which the submission relates decided by a Court of law. It must therefore appear clearly from the terms of the submission that with reference to any point the party has so deprived himself. The loss or damage by fire which is insured against in a policy of insurance cannot include loss caused by

ARBITRATION—*contd.*

1. REFERENCE TO ARBITRATION—*concld.*

deterioration of the property insured consequent on neglect (if any) of the Insurance Companies to take care of it if they have taken possession. A loss so caused is not an inevitable or direct consequence of the mischief by fire. It is only where mischief arises from fire (in fire insurance cases) and from perils of the sea (in marine insurance cases) and the natural and almost inevitable consequence of that mischief is to create further mischievous results that underwriters become responsible for the further mischief so incurred. *Montoya* v. *London Assurance Company, 6 Ex. 451, 458*, referred to. The fact that a petition by nineteen different Companies was not signed by all the nineteen Companies, and that the appeal from the order of the Judge dismissing the petition was by but one of the nineteen Companies, and the other Companies were not parties to it, would have required serious consideration if the Court had to revoke the submission to arbitration but when the order which the Court passes is only an intimation to the arbitrators of its opinion on the question of their jurisdiction it is immaterial whether all or some of the Companies are formally parties to the proceedings in appeal. As to the objection that even so far as the petition is by one Company, it is signed by one of its officers without any authorisation as required by law, the defect is a mere irregularity which can be cured, if necessary, by the Company putting in a power of attorney showing the authority given to a signatory. *Per* BATCHELOR, *J.* :—The loss insured against is limited to the loss by fire (which includes the loss by water in extinguishing the fire) and cannot conveniently embrace all possible damages, however remote, which could by ingenuity be traced up to some connection with the fire as the ultimate *causa sine qua non*. It is impossible to hold that damages arising from the alleged negligence of Insurance Companies while in possession are properly claimable in pursuance of the contract of insurance, for whereas this contract refers only to loss by fire, those damages would arise from an origin totally different and wholly distinct and separable from the fire, namely, a neglect of some duty imposed on the companies after the loss by fire or water has become an accomplished fact. ATLAS ASSURANCE COMPANY, LIMITED *v.* AHMEDBHOY HABIBHOY (1908) **I. L. R. 34 Bom. 1**

2. ——— *Reference by parties to a suit—Application to stay proceedings—Arbitration Act (IX of 1899), s. 19.* S. 19 of the Arbitration Act only applies where there has been a submission to arbitration before the commencement of legal proceedings *Ramjidas Poddar* v. *Howse, I. L. R 35 Calc 199*, followed. PERURI SURYANARAYAN & Co. *v* GULLAPUDI CHINNA (1909) . . **I. L. R. 34 Bom. 372**

2. AWARDS.

1. ——— **Private reference**—*Award*—*Reference by some of the disputing parties, effect of*—

ARBITRATION—*concl'd.*

2. AWARDS—*concld.*

Civil Procedure Code (Act XIV of 1882), s. 506. Upon a suit brought by the plaintiffs for recovery of possession of certain lands, the defence raised was that the plaintiffs were bound by an award which was made upon a private reference to arbitration, to which some of the plaintiffs and the defendants were parties.—*Held*, that the award was binding as between those plaintiffs and the defendants who were parties to the reference JADUNATH CHOWDHRY *v.* KAILAS CHANDRA BHATTACHARJEE (1909) **I. L. R. 37 Calc. 63**

2. ——— Award made after the death of one of the parties—*Nunc pro tunc, whether applicable to the award—Submission to arbitration, revocation of, by the death of a party.* Where a submission to arbitration has been made a rule of Court, the death of one of the parties does not work a revocation. Where an agreement to refer having been filed in Court, the Court appointed an arbitrator who, after finishing his enquiries and hearing the arguments of the pleaders of the parties, reserved his report and award, and then one of the parties died: *Held*, that under the circumstances of the case the death of the party did not make the award void and the doctrine of *nunc pro tunc* was applicable as in the case of a judgment of Court. HARA KRISHNA MITRA *v.* RAM GOPAL MITRA (1910) . . . . . **14 C. W. N. 759**

ARMS.

See ARMS ACT (XI OF 1878), S. 4.
I. L. R. 32 All. 152

ARMS ACT (XI OF 1878).

——— **s. 4**—*Definition—Ammunition—Empty cartridge-cases. Held*, that Indian empty cartridge cases are ammunition within the meaning of s. 4 of the Indian Arms Act, 1878. *King-Emperor* v. *Ibrahim, 7 Bom. L. R 474*, followed EMPEROR *v.* BALDEO SINGH (1909) . **I. L. R. 32 All. 152**

ARREARS OF RENT.

See PUTNI TENURE
I. L. R. 37 Calc. 747

ARREST.

See CIVIL PROCEDURE CODE, 1908, SS. 47, 96, 104 (*b*), 135 (2).
I. L. R. 32 All. 3

ASSAM LABOUR AND EMIGRATION ACT (VI OF 1901).

——— **s. 164.**

See EMIGRATION . **I. L. R. 37 Calc. 27**

ASSAM LAND AND REVENUE REGULATION.

——— **s. 6**—*Assam Land and Revenue Regulation (I of 1886), s. 6, Rule 80 (i) of the Government Rules—Settlement of land, first applicant if entitled—Jurisdiction of Civil Court.* Rule 80, cl. (*i*) of the rules framed under Regulation I of 1886 of the Assam Land and Revenue Regulations lays down a principle for the guidance of Settlement Officers and does not confer a right on the first applicant to a settlement It directs that in cases where settlement is not made with the first applicant the reasons therefor should be stated in writing. It does not follow from this that if the reasons are not recorded the first applicant is entitled to a settlement. *Madhab Nath* v. *Myarani Medhi, I. L R. 17 Calc. 819; Patan Maria* v. *Bhabram Dutt, I L. R 24 Calc. 239*, distinguished. Under s. 6 (*a*) of the Regulation no right to settlement arises merely by reason of the fact that the plaintiff was the first applicant ANANDA KISORE SEN *v.* SECRETARY OF STATE FOR INDIA (1910)
14 C. W. N. 990

ASSESSMENT.

See TRANSFER OF PROPERTY ACT, SS. 55, 123 . . **I. L. R. 34 Bom. 287**

1. ——— Arable land—*Exemption from—Bengal Municipal Act (Beng. III of 1884), s 6, cls. 3, 85—"Holding"—Bengal Municipal (Amendment) Act of 1894, s 36* The word "holding" in the Bengal Municipal Act, 1884, is wide enough to cover arable land, which is, therefore, liable to be assessed under the provisions of the Act. MAHADEB AON *v.* CHAIRMAN OF THE HOWRAH MUNICIPALITY (1910) . **I. L. R. 37 Calc. 697**

2. ——— Jurisdiction of Civil Court—*Bengal Municipal Act (Beng. III of 1884), s. 116—Ultra vires.* Under s. 116 of the Bengal Municipal Act, the decision of the Objection Committee in matters regarding the amount of assessment is final, and the Civil Court has no jurisdiction to interfere in such matters. It can only interfere when the assessment is *ultra vires*. *Manessur Dass* v. *The Collector and Municipal Commissioners of Chapra, I L. R. 1 Calc. 409*, referred to. *Navadvp Chandra Pal* v. *Purnananda Saha, 3 C W. N. 73*, and *Kameshwar Pershad* v. *The Chairman of the Bhabua Municipality, I. L. R 27 Calc. 849*, distinguished. CHAIRMAN, MUNICIPAL BOARD, CHAPRA *v.* BASUDEO NARAIN SINGH (1910) . **I. L. R. 37 Calc. 374**

ASSESSMENT OF RENT.

——— **by Collector—**

See CHAUKIDARI CHAKRAN LAND.
I. L. R. 37 Calc. 588

ASSESSMENT ON LAND.

See BOMBAY LAND REVENUE CODE (ACT V OF 1879), S. 48.
I. L. R. 34 Bom. 239

ASSESSOR.

——— **appointment of—**

See BENGAL MUNICIPAL ACT (BENG III OF 1884) . **I. L. R. 37 Calc. 44**

ATTACHMENT.

See CIVIL PROCEDURE CODE, 1908, s. 151. **I. L. R. 34 Bom. 135**

See CONTRIBUTION **I. L. R. 32 All. 479**

See DISPUTE CONCERNING LAND **I. L. R. 37 Calc. 331**

See SALE FOR ARREARS OF REVENUE **14 C. W. N. 677**

ATTACHMENT BEFORE JUDGMENT.

See DIVORCE . **I. L. R. 37 Calc. 613**

——— **Divorce Act (IV of 1869), ss. 7, 45**—*Civil Procedure Code (Act V of 1908), o. XXXVIII, rr. 5, 6—Relief.* An order for attachment before judgment will not be made in divorce proceedings. Attachment before judgment being a matter of relief and not of procedure, is governed by s. 7 of the Divorce Act and the principles and rules of the English Divorce Court, and not by s 45 of the Divorce Act and the Civil Procedure Code. Order XXXVIII, rules 5 and 6, have no application in divorce proceedings. PHILLIPS *v.* PHILLIPS (1910) . . . . **I. L. R. 37 Calc. 613**

ATTESTATION.

——— *Document, execution of —Attesting Witness—Transfer of Property Act (IV of 1882), s. 59—Whether one joint executant of a deed can be treated as an attesting witness to the signature of the other—Purdanashin lady, whether an attesting witness should actually see the signature made, or the mark affixed by* When a document is jointly executed by more than one person in the presence of each other, each executant cannot be treated as an attesting witness in respect of the signature of every other executant. For the purpose of valid attestation under s. 59 of the Transfer of Property Act, it is not essential that the witnesses should actually see the signature made, or the mark, seal or thumb impression affixed, but it would be sufficient if the execution took place in presence of the witnesses, although the executants were screened off from the gaze of the witnesses themselves. SARUR JIGAR BEGUM *v.* BARADA KANTA MITTER (1910) . . . . **I. L. R. 37 Calc. 526**

ATTESTING WITNESS.

See ATTESTATION **I. L. R. 37 Calc. 526**

See MORTGAGE . **14 C. W. N. 1046**

AUCTION-PURCHASER.

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), SS. 244, 252, 647. **I. L. R. 34 Bom. 546**

——— **right of—**

See INCUMBRANCE **I. L. R. 37 Calc. 322**

AWARD.

See ARBITRATION . **I. L. R. 37 Calc. 63** **14 C. W. N. 759**

AWARD—*concld.*

See CIVIL PROCEDURE CODE (1908), SCH. II, s. 1 . . **I. L. R. 32 All. 657**

See STAMP ACT (II OF 1899), s 62 (1) (*b*). **I. L. R. 32 All. 198**

——— **construction of—**

See PRE-EMPTION **I. L. R. 34 Bom. 567**

AYAUTUKA STRIDHAN.

See HINDU LAW . **I. L. R. 37 Calc. 863**

AYYA.

See REGULATION II OF 1827, s. 21. **I. L. R. 34 Bom. 455**

B

BAIL.

——— **grounds of—**

See BAIL . . **I. L. R. 37 Calc. 412**

1. ——— **High Court, jurisdiction of to grant bail**—*Grounds of bail—Sufficient cause for further inquiry into guilt of accused —Undue delay—Taking cognizance—Application of special procedure to the case—Power of the Lieutenant-Governor—Criminal Procedure Code (Act V of 1898), ss. 190, 497, 498—Criminal Law Amendment Act (XIV of 1908), ss 2, 12, 14 (1).* The power of the High Court to grant bail "*in any case*" under s. 498 of the Criminal Procedure Code is not affected by Act XIV of 1908, but the Court ought, in the exercise of its discretion, to take into consideration the limitation imposed by s. 12 of the latter. The High Court refused bail where it appeared from the record and the Magistrate's explanation that there was cause for further inquiry into the case against the petitioner, and that there had been till then no undue delay in the proceedings. Where a police report of a dacoity was submitted to the Sub-Divisional Officer of Diamond Harbour on the 24th April 1909, the date of the dacoity, and the case was subsequently withdrawn by the District Magistrate to his own file, and on the 20th January 1910, an order was made by the Lieutenant-Governor in terms of s. 2 of Act XIV of 1908 applying the provisions of Part I to the case :—*Held*, that the latter Magistrate had taken cognizance, and that the Lieutenant-Governor had power to make the order. EMPEROR *v.* SOURINDRA MOHAN CHUCKERBUTTY (1910) **I. L. R. 37 Calc. 412**

2. ——— **Power of Sessions Judge to grant bail**—*Cases to which special procedure has been applied—Criminal Procedure Code (Act V of 1898), ss 497, 498—Criminal Law Amendment Act (XIV of 1908), ss 12, 14 (1).* The power of the Sessions Judge to grant bail under s. 498 of the Criminal Procedure Code is, in cases to which the provisions of Part I of Act XIV of 1908 have been applied by s. 2.

BENGAL MUNICIPAL ACT (BENG. III OF 1884)—*concld.*

——— **s. 260A—*concld.***

Held, that the action of the Municipality was *ultra vires*. S. 260 of the Bengal Municipal Act was never intended to be so applied as to enable the Municipal Commissioners to create an exclusive right in favour of any person to sell fuels for burning dead bodies. GOUR MONI DEBI *v* CHAIRMAN OF PANIHATI MUNICIPALITY (1910) **14 C. W. N. 1057**

BENGAL MUNICIPAL (AMENDMENT) ACT (IV OF 1894).

——— **s. 36.**

See ASSESSMENT, EXEMPTION FROM.
I. L. R. 37 Calc. 697

BENGAL, N.-W. P. AND ASSAM CIVIL COURTS ACT (XII OF 1887).

——— **s. 21—*Act No. VII of 1870 (Court Fees Act), s. 11—Valuation of suit—Appeal—Jurisdiction.*** So long as there has been no order accepted by the plaintiff to make good a deficiency in court fees, the original value assigned by the plaintiff must be taken as the value of the suit for the purpose of regulating the jurisdiction of the Appellate Court; but when there has been such an order made and accepted by the plaintiff, from that moment the value of the suit must be taken as being in accordance with the fee actually paid by the plaintiff *Iyyatulla Bhuyan* v. *Chandra Mohan Banerjee, I. L. R. 34 Calc. 954*, followed. *Madho Das* v. *Ramji Patak, I. L. R. 16 All. 286*, distinguished. GOSWAMI SRI RAMAN LALJI MAHARAJ v. BOHRA DESRAJ (1910)
I. L. R. 32 All. 222

BENGAL SURVEY ACT (BENG. V OF 1875).

——— **s. 41.**

See DISPUTE CONCERNING LAND.
I. L. R. 37 Cac. 331

BENGAL TENANCY ACT (VIII OF 1885).

——— **s. 5 (2).**

See PASTURE LANDS . **14 C. W. N. 372**

——— **ss. 15, 16—*Joint landlords, one of whom failed to comply with the requirements of s. 15—Effect—Civil Procedure Code (Act V of 1908), s. 115—Charter Act (24 & 25 Vict., Chap. 104), s. 15.*** S. 16 of the Bengal Tenancy Act was not intended to defeat in its entirety a suit brought by one of several landlords who is not in default in respect of the requirements of s. 15, merely by reason of the failure of his co-sharers to comply with those requirements. Where a co-sharer of the plaintiff landlord not having complied with the requirements of s. 15 of the Bengal Tenancy Act, the plaintiff brought a suit against the tenants for the entire rent making the defaulting co-sharers *pro formâ* defendants:

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

——— **ss. 15, 16—*concld.***

Held, that the plaintiff was not entitled to get a decree in respect of the entire rent payable jointly to himself and his co-sharer but a decree should be made in favour of the plaintiff in respect of the share of rent payable to himself, and if his co-sharer does not comply with the requirements of s 15 before the decree is made, the claim in respect of the share of rent payable to the co-sharer should be dismissed. Where the lower Court dismissed the plaintiff's suit for rent in its entirety on the ground that his co-sharer not having complied with the requirements of s. 15 of the Bengal Tenancy Act, the whole suit must fail: *Held*, that the High Court could interfere in such a case under s. 115, Civil Procedure Code, 1908, and under s. 15 of the Charter Act. TARINI CHARAN BANERJEE *v.* CHANDRA KUMAR DEY (1910) **14 C. W. N. 788**

1. ——— **s. 20.—Presumption.** The presumption under s. 20 does not arise in a suit for rent which is not a proceeding under the Bengal Tenancy Act. *Pramada Nath Roy* v. *Ramani Kanta Roy, I L. R. 35 Calc. 331 : s. c. 12 C. W. N. 249*, referred to. MULLICK CHAND DAS *v.* SATIS CHANDRA DAS (1909)
14 C. W. N. 335

2. ——— The presumption under s 20, cl 7 of the Bengal Tenancy Act that a raiyat has continuously held the land as such for 12 years, arises only in proceedings under the Bengal Tenancy Act, but a suit for rent is not a proceeding under that Act. *Pramada Nath* v. *Ramani Kanta, I. L R. 35 Calc 331; s c. 12 C W. N 249 : 7 C. L. J. 139; Mulluk Chand* v. *Satis Chandra, 11 C. L. J. 56*, relied on. JAHANDAR BAKSH MULLIK *v* RAM LAL HAZRA (1910)
14 C. W. N. 470

——— **ss. 22, cl. (2), 159, 160 cl. (g).**

See LANDLORD AND TENANT.
I. L. R. 37 Calc. 709

——— **s. 23.**

See LANDLORD AND TENANT.
I. L. R. 37 Calc. 815

——— **s. 29.**

See LANDLORD AND TENANT—ENHANCEMENT OF RENT **I. L. R. 37 Calc. 610**

——— S. 29 of the Bengal Tenancy Act controls merely cl (*a*) and not cl. (*b*). *Bepin Behari Mondol* v. *Krishna Dhone Ghose, I. L. R. 32 Calc. 395, : s.c 9 C. W. N. 265* referred to. If therefore rent has been enhanced by more than two annas in the rupee, the mere fact of payment at the enhanced rate for three years does not entitle the landlord to realise at that rate. MULLUK CHAND DASS *v.* SATISH CHANDRA DASS (1909) . . . . . **14 C. W. N. 335**

——— **ss. 29, 30, 32, 39.**

See LANDLORD AND TENANT
I. L. R. 37 Calc. 742

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

——— ss. 43, 108.

See LANDLORD AND TENANT.
I. L. R. 37 Calc. 449

——— s. 65

See DECREE FOR RENT.
14 C. W. N. 352

See PUTNI TENURE
I. L. R. 37 Calc. 747

———*Tenure sold for rent, again sold for previous arrears—First charge—Notice—Application by purchaser to set aside sale on the ground that judgment-debtor had no saleable interest—Civil Procedure Code (Act V of 1908), order XXI, rule 91—Limitation—Limitation Act (IX of 1908), Sch I, Arts. 166, 181.* After a tenure has been sold in execution of a decree for arrears of rent, the decree-holder cannot again put up a portion of the tenure to sale in execution of a decree for previously accrued arrears of rent, on the ground that such rent constituted a first charge on the tenure. When therefore it did not appear that the tenure was sold at the first sale subject to a charge for previously accrued arrears of rent: *Held*, that a subsequent sale in execution of a decree for such rents passed no title, and the sale was liable to be set aside on the ground that the judgment-debtor had no saleable interest. The second sale took place when the first sale had been set aside; but in consequence of an appeal the sale was ultimately confirmed: *Held*, that the right of the purchaser at the second sale to apply for setting aside the sale did not accrue till the first sale was confirmed and limitation therefore ran under Art 181 of Sch. I of the Limitation Act, 1908, from such date and not from the date of sale. GOPAL SARAN NARAIN SINGH *v* SHEIKH MD AHSAN (1910) . . . **14 C. W. N. 1096**

——— s. 85—*Registered mokurari under-raiyati lease—Under-raiyats dispossessed by strangers—Suit to recover possession—Proof of title, if necessary* Where certain persons in whose favour an occupancy raiyat had executed a registered *mokurari pattah* were in possession of the holding as tenants of the occupancy-raiyat when they were dispossessed by the defendants who had no title to the land: *Held*, that, assuming that the permanent *mokurari* under *raiyati* lease was void under s 85 of the Bengal Tenancy Act, it was open to them to prove their tenancy *aliunde*. *Lala Surabh Narain* v. *Catherine Sophia, 1 C. W. N. 248*, *Fazel Sheikh* v. *Keramuddi Sheikh, 6 C. W. N. 916*, followed. That their suit to recover possession of the holding from the defendants who were trespassers should succeed upon proof of their bare possession when dispossessed. *Premraj* v. *Narayan, I. L. R. 6 Bom. 215*, followed. BANKA BEHARY CHRISTIAN *v.* RAJ CHANDRA PAL (1909) **14 C. W. N. 141**

——— s. 86—*Sale of part of a holding, if an incumbrance.* An incumbrance must imply

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

——— s. 86—*concld.*

a limitation of the rights of the tenant and not a total extinction of them. A sale of a portion of a non-transferable occupancy holding is not an incumbrance within the meaning of s. 86, sub-ss. (6) and (7) of the Bengal Tenancy Act. *Jogeshwar Mazumdar* v. *Abed Mahomed, 3 C. W. N. 13*, distinguished. TAMIZUDDIN KHAN *v.* KHODA NAWAZ KHAN (1909) . . **14 C. W. N. 229**

——— s. 91—*Application for requiring attendance of tenants at measurement of holdings by landlord—One application against several tenants if competent* S. 91 of the Bengal Tenancy Act does not contemplate that there should be separate applications under that section by the landlord against each tenant. An application by the landlord with reference to the several tenants having holdings in the land which the zemindar desires to measure, is competent under the section. HAJI SHAH MOMTAZ HOSSAIN *v* RAGHU NANDAN SAHU (1909) . . . . **14 C. W. N. 231**

——— s. 102—*Bengal Tenancy Act (VIII of 1885), s. 102, as amended by Act III of 1898, s. 102, cls. (a), (c), (i), s. 106—Trespasser in possession of holding—Name erroneously recorded—Suit to declare him trespasser under s. 106—Amending of entry* The terms "occupier" and "occupant" in cls (*a*) and (*c*), s. 102, were presumably added to cover the case indicated in clause (*i*) added at the same time. A purchaser of a non-transferable occupancy holding, being a trespasser, is not entitled to have his name entered in the record-of-rights under cls. (*a*) or (*c*) of s. 102 of the Bengal Tenancy Act. Where such a person's name was recorded: *Held*, that the Revenue Officer proceeding under s. 106 acted properly in adding a note to the effect that he was a trespasser UMEDULLA SARDAR *v.* RAM CHANDRA BHADURI (1910) **14 C. W N. 812**

——— s. 103B—*Res judicata—Civil Procedure Code (Act V of 1908), s 12.* A record-of-rights was prepared and finally published on the 31st December 1898. In a suit for rent which subsequently fell due, rent was claimed at the rate stated in the *khatian*, the Court did not allow the plaintiff rent at the rate claimed but at the rate admitted by the defendant. In a second suit for rent for a period subsequent to that for which the first suit was brought, plaintiff claimed rent again at the rate mentioned in the *khatian*: *Held*, that inasmuch as the *khatian* was not considered in the earlier suit, the presumption under s. 103B of the Bengal Tenancy Act in its favour continued, and the Court should consider the same as evidence in the case. SARIFUNNESSA CHOWDHURANI *v.* SASADHAR MOULIK (1909) . **14 C. W. N. 364**

——— s. 105—*Bengal Tenancy Act (VIII of 1885) (before amendment by Act I, B. C. of 1907 or Act I, E. B. & A. C. of 1908), ss. 105, 106, 109—Suit to declare entry in record-of-rights erroneous, after decision under s. 105, if lies—Suit under s. 106,*

BENGAL TENANCY ACT (VIII OF 1885)—*contd*

——— s. 105—*concld.*

not exclusive remedy—Question of correctness if should be raised under s. 105—Erroneous practice of Revenue Officers A proceeding under s. 105 of the Bengal Tenancy Act before amendment by Act I, B. C of 1907 or Act I, E. B & A. C. of 1908, if properly conducted, should have dealt exclusively with the question of fair and equitable rent, the correctness of the entries in the record-of-rights as finally published being assumed for the purpose of such a proceeding. Questions as to the correctness of the entries could not therefore properly form the subject of an enquiry under s 105. *Shambhu Chandra* v. *Purna Chandra, I. L. R 35 Calc 176. s. c. 12 C W. N. 176,* followed. *Parthichand Lal* v. *Basarat Ali, I. L. R 37 Calc 30 s.c 10 C. L J. 543; 13 C W. N. 1149,* referred to. S 109 of the Act clearly indicated that s 106 did not provide an exclusive remedy against erroneous entries in the record-of-rights. *Jogendra Nath* v. *Krishna Pramada, I. L R. 35 Calc 1013. s c. 12 C. W. N 1032,* dissented from. A decision in a proceeding under s. 105 in which no question as to the correctness of the entries was raised would therefore be no bar to a civil suit questioning the correctness of the entries in the record-of-rights. PANDAB DOWARI DAS *v.* ANANDA KISHUN CHAKRABUTTY (1910) . . . **14 C. W. N. 897**

——— s. 106—

1. ——— *Bengal Tenancy Act (VIII of 1885), ss. 50, 106—Record-of-rights, erroneous entry in—Suit not instituted under s. 106 if debars suit in Civil Court—Occupancy raiyats holding at fixed rates—Proof of payment of rent at same rate for more than 20 years—Absence of rebutting evidence—Presumption under s. 50, if arises—Status proved apart from presumption.* The failure of a person to institute a suit under s. 106, Bengal Tenancy Act, for the purpose of correcting an entry in a record-of-rights does not debar him from bringing a regular suit to establish his rights. If no case has been brought and decided under that section, the entry in the record-of-rights at most is presumed to be correct, but the presumption is rebuttable and the entry does not amount to a final adjudication of the rights of the parties. *Jogendra Nath* v. *Krishna Pramada, I. L. R. 35 Calc. 1013 : s. c. 12 C. W N. 1032,* dissented from. *Ramgulam* v. *Bishnu, 11 C. W N. 48 ; Troylokhya Nath* v. *Macleod, I. L. R 28 Calc. 28,* approved. The plaintiffs who had been entered in the record-of-rights as tenure-holders under the defendants without fixity of rent, brought this suit to have it declared that they were occupancy-raiyats holding at fixed rates and proved that they were holding the jamas at the same rents for periods of 27, 60 and 57 years respectively, and no evidence was given by the defendants that any different rent had ever been realised: *Held,* that upon this a Court would be justified in holding that the plaintiffs were occupancy-raiyats holding at rents fixed in perpetuity, apart from any presumption under s. 50, Bengal Tenancy Act. *Quære* · Whether in such a suit this presumption can arise. *Sarat Chandra* v. *Shyam Chand, 10 C W N. 930, Taran Krishna v. Robert Watson & Co, 10 C. W N lxxiii,* referred to. GULAB MISSER *v* KUMAR KALANAND SINGH (1910) . . . **14 C. W. N. 884**

2. ——— S 109 of the Bengal Tenancy Act clearly indicates that s. 106 does not provide an exclusive remedy against erroneous entries in the record-of-rights. *Jogendro Nath* v. *Krishna Pramada, I. L. R. 35 Calc. 1013 : 12 C. W. N. 1032,* dissented from. PANDAV DOWARI *v.* ANANDA KISSEN (1910) . **14 C. W. N. 897**

——— s. 149.

See INTERPLEADER . **14 C. W. N. 542**

——— Sch. III, Art. 6—*Application for execution—Judgment-debtor discovered to have been dead on date of application—Application for substitution after expiry of period of limitation —Limitation.* The decree-holder applied for execution of a decree for rent on the last day of the period of limitation allowed by Art. 6 of Sch. III of the Limitation Act, and subsequently discovered that the judgment-debtor had died before the date of the application and, without unreasonable delay, got his legal representative substituted in his place and proceeded with the execution as against the latter: *Held,* that the proceeding against the legal representative of the judgment-debtor was in continuation of the proceeding started on the last day of limitation and was not time-barred. KUMAR KALANAND SINGH *v.* CHANDRA KISHORE JHA (1910) **14 C. W. N. 971**

BENGAL TENANCY ACT (VIII OF 1885) AS AMENDED BY BENG. ACTS III OF 1898 AND I OF 1903.

——— ss. 50, 105, 115.

See LANDLORD AND TENANT.
I. L.R. 37 Calc. 30

BEQUEST.

——— for establishment of an idol.

See HINDU LAW—WILL.
I. L. R. 37 Calc. 128

BIGAMY.

See PENAL CODE, s. 494.
I. L. R. 33 Mad. 371

———" Person aggrieved "—*Penal Code (Act XLV of 1860), s. 49—Criminal Procedure Code, s. 198—Procedure—Commitment.* In a case of bigamy, the person aggrieved is either the first husband or the second husband and not the father. Where a complaint was preferred by the

BIGAMY—*conc'd.*

father of the first husband, which resulted in a commitment on a charge under s. 498 of the Indian Penal Code : *Held*, that the commitment was bad. EMPEROR *v* LALA (1909) . **I. L. R. 32 All. 78**

BILL OF LADING.

——— **pledgee of—**

See SALE OF GOODS ACT (56 AND 57 VIC., C. 71), SS 45 AND 47
I. L. R. 34 Bom. 640

BOAT.

See OPIUM, ILLEGAL POSSESSION OF.
I. L. R. 37 Calc. 24

BOMBAY ACTS.

——— **1852—XI.**

See BOMBAY TITLES TO RENT-FREE ESTATES ACT.

——— **1869—XIV.**

See BOMBAY CIVIL COURTS ACT.

——— **1874—III.**

See BOMBAY HEREDITARY OFFICES ACT.

——— **1876—X.**

See REVENUE JURISDICTION ACT, BOMBAY.

——— **1878—V.**

See BOMBAY ABKARI ACT.

——— **1879—V.**

See BOMBAY LAND REVENUE CODE.

——— **XVII.**

See DEKKHAN AGRICULTURISTS' RELIEF ACT, 1879

——— **1881—XXIII.**

See DEKKHAN AGRICULTURISTS' RELIEF ACT, 1881.

——— **1888—III.**

See BOMBAY MUNICIPAL ACT, 1888

See CITY OF BOMBAY MUNICIPAL ACT.

——— **VI.**

See GUJARAT TALUKDARS ACT.

BOMBAY ABKARI ACT (BOM. V OF 1878).

——— **ss. 43 (*b*), 47**—*Cocaine—Illegal possession—Removal—Transportation of cocaine.* Accused No 1, who was illegally in possession of cocaine, brought it from his room and gave it to accused No. 2 who stood opposite his house. The latter carried it to some distance and delivered to a *purdeshi*. The two accused were, under these circumstances, charged with transporting cocaine, an offence punishable under s. 43 (*b*) of the Bombay Abkari Act, 1878. The Magistrate,

BOMBAY ABKARI ACT (BOM. V OF 1878)—*concl'd.*

——— **ss. 43 (*b*), 47**—*concl'd.*

however, acquitted them of the offences and convicted them of illegal possession of cocaine, under s. 47 of the Act. Against this order of acquittal, the Public Prosecutor appealed to the High Court : *Held*, that the Magistrate was right in declining to convict the accused under s. 43 (*b*) of the Bombay Abkari Act, 1878, inasmuch as the accused's offence consisted not in moving the cocaine from one place to another, but in the unauthorised possession of it at any place in contravention of the Act. S. 43, clause (*b*), seems to contemplate rather the case of a person who is in lawful possession of cocaine at one place, but is by law forbidden to remove it either partly or wholly to another place. EMPEROR *v.* BALVANTRAO ANANTRAO (1910)
I. L. R. 34 Bom. 342

BOMBAY CIVIL COURTS ACT (BOM. XIV OF 1869).

——— **s. 24.**

See RESTITUTION OF CONJUGAL RIGHTS.
I. L. R. 34 Bom. 236

——— **Part V.—Jurisdiction**—*Suit cognizable and heard by the First Class Subordinate Judge—Application to the Court of the District Judge for transfer—Transfer of the application to the Assistant Judge—Order of the Assistant Judge for transfer of the suit to the District Court—Civil Procedure Code (Act V of 1908), s. 24.* The plaintiff filed a suit in the Court of the first class Subordinate Judge claiming Rs18,797. The suit was heard by that Judge for some days and then the defendant filed an application in the Court of the District Judge for transfer of the suit to another Court. The District Judge transferred the application to the Assistant Judge for disposal. The Assistant Judge heard the application and ordered that the suit be transferred to the District Court for trial. The plaintiff having objected that the order of the Assistant Judge was without jurisdiction : *Held*, setting aside the order, that under the provisions of the Bombay Civil Courts Act (XIV of 1869), Part V, the limit of the Assistant Judge's jurisdiction for the purpose of hearing suits is Rs10,000 and that in case of suits and applications when the value of the subject-matter does not exceed Rs5,000, an appeal in appealable cases lies to the District Judge. The Assistant Judge is, therefore, not a Judge of co-ordinate jurisdiction to the District Judge. He is, therefore, not a Judge of the District Court and the order complained of was not made by the District Court which alone had jurisdiction. S. 24 of the Civil Procedure Code (Act V of 1908) empowers the District Court to withdraw any suit *and* try and dispose of it. The suit withdrawn being for a sum exceeding the jurisdiction of the Assistant Judge, he could not try and dispose of it. He was, therefore, not a Judge of the District Court as contemplated by the section

BOMBAY CIVIL COURTS ACT (BOM. XIV OF 1869)—*concld.*

——— **s. 24**—*concld.*

which must be a Court of unlimited pecuniary jurisdiction. HAJI UMAR ABDUL RAHIMAN *v* GUSTADJI MUNCHERJI (1910) . . **I. L. R. 34 Bom. 411**

BOMBAY HEREDITARY OFFICES ACT (BOM. III OF 1874).

——— **ss. 25, 36**—*Death of registered Vatandar—Representation—Eldest son or other nearest heir of the deceased—Suit for declaration—Jurisdiction* S. 25 of the Hereditary Offices Act (Bom. Act III of 1874) imposes the duty upon the Collector of determining the custom of a Vatan and what person shall be recognized as representative Vatandar. A suit for a declaration that the plaintiff is the nearest heir of a deceased representative Vatandar is maintainable under s 36 of the Act notwithstanding that it is manifest that the declaration is sought for the purpose of establishing a fact which would enable the plaintiff to have his name entered in the Vatan Register. RAHIMKHAN *v.* DADAMIYA (1909) . **I. L. R. 34 Bom. 101**

BOMBAY LAND REVENUE CODE (BOM. ACT V OF 1879).

——— **ss. 3 (11), 217**—*Survey settlement introduced into Inam village—Inamdar's name entered as Khatedar—Permanent tenant of the Inamdar before the settlement—Inamdar's right to enhance rent* S. 217 of the Bombay Land Revenue Code (Bom Act V of 1879) is not restricted in its application to registered occupants only: it invests "the holders of all lands" in alienated villages with the same rights and imposes upon them the same responsibilities in respect of the lands in their occupation that occupants in unalienated villages have. The term "holder" as defined in clause 11, s. 3 of the Land Revenue Code, is wide enough to include even a tenant who has entered into possession under an occupant. NANABHAI BAJIBHAI *v.* THE COLLECTOR OF KAIRA (1910) . . **I. L. R. 34 Bom. 686**

——— **s. 48**—*Government—Assessment on land—Land appropriated for agricultural purposes—Special user of land by stacking thereon timber in fair season—Construction of statute* The plaintiff, who was the occupant of land used for agricultural purposes, paid to Government the assessment chargeable on "land appropriated" for those purposes under cl (*a*) of s. 48 of the Bombay Land Revenue Code, 1879. During the seasons when the land was not used for agricultural purposes, the plaintiff had let it out for stacking timber and derived profit from this special user of the land Government levied an additional assessment on the land on account of that special user, purporting to do so under s. 48, cl. (*b*) of the Code *Held*, that the lands could not be charged with any additional assessment in respect of the special user under s. 48, cl. (*b*), of the Code; for the expression "appropriated for any purpose" in the clause means set apart for that purpose to the exclusion of all other uses. The Bombay Land Revenue Code (Bombay Act V of 1879) is a taxing enactment and must be construed strictly in favour of the subject. SECRETARY OF STATE *v* LALDAS (1909) **I. L. R. 34 Bom. 239**

BOMBAY LAND REVENUE CODE (BOM. ACT V OF 1879)—*concld.*

——— **s. 48**—*concld.*

BOMBAY MUNICIPAL ACT (BOM. III OF 1888).

——— **s. 251A.**

See CONSTRUCTION OF STATUTES. **I. L. R. 34 Bom. 496**

——— **s. 251A, cl. (a)**—*Building*—"*Directly over or directly under*"—*Construction.* The words "directly over or directly under" in s 251-A, clause (*a*), of the City of Bombay Municipal Act (Bom. Act III of 1888), should be understood in the restricted sense of immediately over or immediately under, so that in effect under this section a water-closet may be built so as be vertically over or under any part of a building provided that a bath-room intervenes. Where it is not suggested that a word bears any technical sense in the context in which it occurs, the construction must proceed upon the general rule that statutes are presumed to use words in their popular sense. CURRIMBHOY EBRAHIM, SIR, *v.* THE MUNICIPAL COMMISSIONER FOR THE CITY OF BOMBAY (1909) . . . . **I. L. R. 34 Bom. 496**

——— **s. 305**—*Municipal Commissioner—Notice, disobedience of—Private streets—Levelling and draining of—Liability of owners of several premises—Owners of building sites—Buildings constructed by lessees on the sites—Premises, what are—Construction of statutes.* The owner of a large plot of land sub-divided it into a number of building sites, which he arranged on either side of a private street which was projected to run through the plot Those building sites were let to lessees (of whom the applicant was one) for a period of thirty years; at the end of the period the lessee was to remove the building put up by him unless the lessor purchased it. Under the terms of the lease, the lessee was to contribute rateably to the expenses of making, repairing, etc, all ways, roads, etc The applicant was one of those lessees He built a house upon one of those sites, and let it to tenants from whom he received rent The Municipal Commissioner of Bombay issued a notice to the applicant, under s 305 of the City of Bombay Municipal Act (Bombay Act III of 1888), calling upon him to level, metal, drain and light the public street in front of his building. The applicant failed to comply with the notice, for which he was prosecuted under s 471 of the City of Bombay Municipal Act, 1888 He contended that he was not the owner of the premises within the meaning of s. 305 of the Act. The Magistrate overruled the contention

BOMBAY MUNICIPAL ACT (BOM. III OF 1888)—*contd.*

——— s. 305—*concld.*

and convicted him *Held*, that the mere owner of the land who had let it out under a building scheme for building purposes was not the owner of the property, because the property contemplated by s. 305 necessarily embraced buildings, whether erected or to be erected; and the Legislature regarded him as the owner of the premises who had the right to receive rent in respect of that property. The word "premises" occurring in s 305 of the City of Bombay Municipal Act (Bombay Act III of 1888) must be presumed to have been used by the Legislature in its legal sense, as referring to the particular kind of property which forms the subject-matter of the group of immediately preceding sections of the Act. That group (ss. 302—307) has reference to streets made for the use of buildings or building-sites. The dominant idea running through the ss. 302—304 is that of buildings either erected or projected That is the kind of property dealt with in what has gone before s 305; and therefore, that is, its "*præmissa.*" It is a primary rule of interpretation that a word having a popular meaning ought to be construed in that sense. One exception to that rule is that, unless there is something to the contrary in the context, words of known legal import are to be considered as having been used in their technical sense, where the law has attached that sense to them. EMPEROR *v.* RAMCHANDRA BHASKAR MANTRI (1910)

I. L. R. 34 Bom. 593

——— s. 377—*Municipal Commissioner—Neglected premises—Notice to remove nuisance—Magistrate's discretion.* The accused was served with a notice of requisition under s. 377 of the City of Bombay Municipal Act, 1888, requiring him to remove filth, rubbish, heaps of *cutchera* and stable refuse from a large piece of vacant land belonging to him. He failed to comply with the requisition, and a prosecution was instituted against him. The Magistrate viewed the premises; and having so viewed them, but without hearing any evidence, acquitted the accused, as the premises did not appear to him to be in a filthy condition:—*Held*, that the premises having appeared to the Commissioner in a filthy condition, the notice was validly issued under s. 377 of the City of Bombay Municipal Act, 1888; and that there having been a non-compliance with the notice, the offence was complete. *Held*, further, that the Magistrate was wrong in acquitting the accused on the sole ground that the premises did not appear to him to be in such a condition as to justify the issue of a notice under s. 377. S. 377 of the City of Bombay Municipal Act, 1888, enacts that the only condition precedent to the valid issue of a requisition is that it shall appear, not to the Magistrate, but to the Commissioner, that the premises are in the condition specified in the section. EMPEROR *v.* RAJA BAHADUR SHIVLAL MOTILAL (1910) . . . **I. L. R. 34 Bom. 346**

BOMBAY MUNICIPAL ACT (BOM. III OF 1888)—*concld.*

——— s. 390—*Factory—Municipal Commissioner, permission of—Unauthorised factory.* The accused obtained the Municipal Commissioner's permission [s. 390 (*1*) of the City of Bombay Municipal Act, 1888], to establish a hand-loom factory worked by an oil engine: but by means of this oil engine he also established a flour mill without any permission. The accused was, therefore, charged with the offence under s. 390 (*1*) of the Act *Held*, that the accused was guilty of a technical offence under s 390 (*1*) of the City of Bombay Municipal Act, 1888: for although the accused had leave to establish the hand-loom factory, he had no leave to establish the flour-mill factory, which was not the less another and a separate factory because it happened to be worked by the same power which it was proposed to employ in the permitted factory. EMPEROR *v.* MULJI DAMODARDAS (1909) . **I. L. R. 34 Bom. 344**

——— s. 394—*Indian Railways Act (IX of 1890), s. 7—Use by Railway Company of its premises for storing timber—License from the Municipal Commissioner for the use not necessary.* The Agent of the Great Indian Peninsula Railway Company having been charged in the Presidency Magistrate's Court at the instance of the Bombay Municipality under s 394 (1) (*d*) of the City of Bombay Municipal Act (Bom. Act VIII of 1888) with having used the Company's premises for storing timber without a license granted by the Municipal Commissioner, the Presidency Magistrate recorded evidence and referred the following question under s. 432 of the Criminal Procedure Code (Act V of 1898):—"Do the statutory powers given to the Railway Company (s. 7 of the Indian Railways Act IX of 1890) preclude the necessity of obtaining a license from the Municipal Commissioner, to use premises in such a manner as is necessary for the convenient making, altering, repairing and using the Railway?" *Held*, that no such license was necessary S. 7 (1) of the Indian Railways Act (IX of 1890) authorizes the Railway Administration to do all acts necessary for the convenient making, maintaining, altering, repairing and using the Railway notwithstanding anything in any other enactment for the time being in force. The storing of timber was necessary for the convenient making, etc., of the Railway line. Under s. 7, sub-s 2 of the Indian Railways Act (IX of 1890) the Governor General in Council and not the Municipal Commissioner has the control of the Railway Administration in the exercise of its powers under sub-s. 1. MUNICIPAL COMMISSIONER OF BOMBAY *v* GREAT INDIAN PENINSULA RAILWAY COMPANY (1908)

I. L. R. 34 Bom. 252

BOMBAY MUNICIPAL ACT (BOM. III OF 1888 AS AMENDED BY BOM. V OF 1905).

——— ss. 33 and 34—*Specific Relief Act I of 1877), s. 45—General Principle underlying*

BOMBAY MUNICIPAL ACT (BOM. III OF 1888 AS AMENDED BY BOM. V OF 1905)—*concld.*

——— ss. 33 and 34—*concld.*

interference by High Court—Municipal election petition—Jurisdiction and discretion of Chief Judge of Small Causes Court. A Municipal election petition having been lodged with the Chief Judge of the Small Causes Court, the latter unseated two of the successful candidates and found cause of objection against the candidate in whose favour were recorded "the next highest number of valid votes after those returned as elected" He declined to inquire further into the claims of any other candidate or to declare any other candidate elected, as, on his interpretation of s 33 (2) of the Bombay Municipal Act (Bom. Act III of 1888 as amended by Bom Act V of 1905), he was not enabled to do so The two highest of the other unsuccessful candidates thereupon obtained rules against the Chief Judge under s. 45 of the Specific Relief Act (I of 1877), to show cause why he should not proceed to declare them elected under s. 33 (2) above mentioned. *Held*, that the case fell within the general principle referred to in *Ex parte Milner*, (1851) 15 Jur 1037, that where an inferior tribunal improperly refused to enter upon a complaint, a mandamus would issue. S. 33 having been held to empower the Chief Judge to set aside the election of any number of candidates returned as elected, there was nothing repugnant in construing the section as empowering the Chief Judge to fill up any number of vacancies so created from the list of unsuccessful candidates subject to the provisions of the section. It was clearly incumbent on the Chief Judge to deal with the question of filling up both the vacancies He should accordingly proceed to place the unsuccessful candidates in order of valid votes. The two with the highest number of valid votes, against whom no cause of objection was found, should be declared to be deemed to be elected If only one qualified, or none qualified, proceedings for filling the vacancy or vacancies would have to be taken under s 34. An application under s. 33 (1) should name the persons whose election is objected to. *In the matter of the* SPECIFIC RELIEF ACT (I OF 1877), AND *in the matters of* SARAFALLY MAMOOJI AND JAFFER JUSUB (1910) . **I. L. R. 34 Bom. 659**

BOMBAY REGULATION (V OF 1827).

——— s. XV, cl. 3.—*Usufructuary mortgage of 1869—Agreement to pay the debt after fixed period—Suit by mortgagee after the expiration of the period for the recovery of the debt by sale of mortgaged property* A usufructuary mortgage executed in the year 1869 contained the following agreement:—"The amount of R1,750 is borrowed on the said premises. We three of us shall, after paying off the said amount of debt after fifteen years from this day, redeem our premises. Perhaps any one of us three might within the period pay off at one time the amount of rupees according to his share, you should allow redemption of the premises

BOMBAY REGULATION (V OF 1827)—*concld.*

——— s. XV—*concld.*

proportionately after receiving the amount and you should pass a receipt for the monies received." In the year 1906 the mortgagee having brought a suit for the recovery of the mortgage debt by sale of mortgaged property, the first Court allowed the claim, but the Appellate Court reversed the decree and dismissed the suit on the ground that where in the case of a usufructuary mortgage the mortgagor agrees to redeem by payment of the principal after a stated period, the mortgagee has no higher or better right than he has under a simple usufructuary mortgage. *Held*, on second appeal by the plaintiffs, that the mortgage in suit was governed by clause 3, s XV of Regulation V of 1827, and there being nothing in the terms of the agreement between the parties which either expressly or by implication indicated that the property should not by means of a suit be applied in liquidation of the debt, the suit would lie. The decree of the Appellate Court reversed and that of the first Court restored. *Mahadaji* v. *Joti*, *I. L. R. 17 Bom. 425* and *Ramchandra* v. *Tripurabai*, *P J. 43*, followed *Shaik Idrus* v. *Abdul Rahman*, *I. L. R 16 Bom. 303*, *Sadashiv* v. *Vyankatrao*, *I. L R 20 Bom. 296*, and *Krishna* v. *Hari*, *10 Bom. L. R 615*, explained. PARASHARAM *v.* PUTLAJIRAO (1909) . . . **I. L. R. 34 Bom. 128**

BOMBAY REGULATION (XVI OF 1827)

See VATAN . **I. L. R. 34 Bom. 175**

BOMBAY TITLES TO RENT-FREE ESTATES ACT (BOM XI OF 1852).

——— Shetsanadi lands—*Rules framed under Act XI of 1852 (Bombay)—Government continuing the shetsanadi lands to the family of the shetsanadi who is discharged by Government without any fault on his part—Continuance on condition of paying full survey assessment on the lands—Subsequent resumption of the lands by Government.* On the death in 1865 of the then *shetsanadi*, one *B*, Government appointed one *Y* as the new *shetsanadi*, but under the rules framed under Bombay Act XI of 1852, Government continued the *shetsanadi* lands to the family of *B* on condition of their paying full survey assessment on the lands. The remuneration of *Y* was made payable out of the extra assessment recovered in 1905. Government resumed the lands and handed them over to *Y* for his services. *Held*, that both the order passed in 1865 and the action taken under the rule framed under Bombay Act XI of 1852 had in law the effect of converting the land from a *shetsanadi vatan* into a *rayatwari* holding and investing the holder of the land with the rights of an ordinary occupant, entitled to it, so long as he paid the survey assessment. *Held*, also, that the proceedings of 1905 were on the supposition that what was done in 1865 on *B's* death had the effect of continuing the lands in dispute

BOMBAY TITLES TO RENT-FREE ESTATES ACT (BOM. XI OF 1852)—*concld*

as one reserved for *shetsanadi* service; but that was not its effect, and the proceedings in question were *ultra vires*. YELLAPPA *v.* MARLINGAPPA (1910) . . . **I. L. R. 34 Bom. 560**

BRIBE.

See PRINCIPAL AND AGENT.
I. L. R. 37 Calc. 81

BROTHEL.

——— order for discontinuance of—

See HIGH COURT, JURISDICTION OF
I. L. R. 37 Calc. 287

BUILDING LEASE.

——— **Transferability**—*Building and Residential Lease—Heritability—Transfer of Property Act (IV of 1882), s. 108 (j).* Where there is a lease for building and residential purposes, in the absence of any intention to the contrary, indicated either in the terms of the grant or in the nature of the tenancy, the leasehold interest is heritable, and the tenancy does not determine by the death of the lessee, but vests in his legal personal representatives who are entitled to give or receive the usual notice to quit. Such a tenancy, in the absence of any custom or contract to the contrary, is governed by the provisions of the Transfer of Property Act, and is consequently *primâ facie* transferable under s. 108 (*j*) of that Act. KISHORILAL ROY CHOWDHRY *v.* KRISHNA-KAMINI CHOWDHRANI (1910) . **I. L. R. 37 Calc. 377**

BUILDINGS.

——— constructed by lessees—

See CITY OF BOMBAY MUNICIPAL ACT (BOMBAY ACT III OF 1888), s 305.
I. L. R. 34 Bom. 593

BUNDH.

——— removal of—

See CRIMINAL PROCEDURE CODE, s. 147
14 C. W. N. 179

BURDEN OF PROOF.

See ADVERSE POSSESSION.
I. L. R. 33 Mad. 362

See HINDU LAW—JOINT FAMILY.
I. L. R. 32 All. 415

——— **Title against Government**—*Evidence of possession necessary to prove title against Government—Nattam poramboke, classification as effect of.* Where in a suit for declaration of title against Government, the plaintiff proves possession for a period of more than 12 years, the Government must prove that it has a subsisting title. When the Government fails to prove such title or possession within 60 years, the plaintiff is entitled to a declaration of title and not merely to a declaration that he is lawfully in possession of such land. The classification of land as nattam poramboke is no legal evidence of title in the Government. At

BURDEN OF PROOF—*concld*

the most, it is evidence only of an assertion of title. *Kattai Mahomed Meera Mahideen* v. *Secretary of State for India, 13 Mad. L J. 269*, explained. *Ganga Ram China Patel* v. *Secretary of State for India, I. L R 20 Bom. 798*, distinguished. *Hanmantarav* v. *Secretary of State for India, I. L. R. 25 Bom. 287*, distinguished. KRISHNA AIYAR *v.* SECRETARY OF STATE FOR INDIA (1909) . **I. L. R. 33 Mad. 173**

BURGADAR.

See LANDLORD AND TENANT.
14 C. W. N. 629

BYE-LAWS.

——— infringement of—

See ENCROACHMENT.
I. L. R. 37 Calc. 671

——— validity of—

See PROSECUTION.
I. L. R. 37 Calc. 545

C

CALCUTTA MUNICIPAL ACT (BENG. III OF 1899).

——— **ss. 18, 102 (*i*) (*c*), 391, 449.**

See DEMOLITION OF BUILDING.
I. L. R. 37 Calc. 585

——— **ss. 341 (1), 450 (3), 574 (c), 631**—*Notice to remove fixture—Disobedience of requisition—Application by General Committee to Magistrate for removal of fixture—Criminal prosecution for offence not instituted—Limitation of time for Criminal prosecution* S. 631 of the Calcutta Municipal Act applies only to a criminal prosecution instituted against a person under s 574 (c) for non-compliance with a requisition under s. 341 (1) in the regular way, that is, on complaint as defined in s. 4 of the Criminal Procedure Code, and not to a proceeding taken under s. 450 (3) by the Magistrate on the application of the General Committee in respect of such non-compliance. SARAF CHANDRA MUKERJEE *v.* THE CORPORATION OF CALCUTTA (1910)
I. L. R. 37 Calc. 384

——— **ss. 444, 574.**

See JOINT PENALTY.
I. L. R. 37 Calc. 895

——— **ss. 449, 580.**

See ACQUIESCENCE.
I. L. R. 37 Calc. 833

——— **ss. 599 (18), 561 (*b*), 631.**

See PROSECUTION **I. L. R. 37 Calc. 545**

——— **s. 632.**

See NUISANCE . **14 C. W. N. 637**

CANCELLATION OF DOCUMENT.

——— suit for—

See LIMITATION ACT (XV OF 1877), SCH. II, ARTS. 91 AND 141.
I. L. R. 32 All. 392

CANTONMENT COMMITTEE.

See CANTONMENTS ACT (XIII OF 1889), S. 80 . . I. L. R. 34 Bom. 583

CANTONMENTS ACT (XIII OF 1889).

——— s. 80—*Civil Procedure Code (Act V of 1908), ss. 2 (17), 80—Public officer—Suit against public officer—Notice of claim necessary—Cantonment Committee is public officer—Cantonments Act (XIII of 1889), s. 80 applies to actions ex delicto and not to actions ex contractu.* A Cantonment Committee constituted under the Indian Cantonments Act (XIII of 1889) is a "public officer" within the meaning of s. 2, cl. (17) of the Code of Civil Procedure (Act V of 1908) Before the Committee can be sued, the notice prescribed by s. 80 of the Code must be given. The notice contemplated by s 80 has to be given for actions sounding substantially in tort; and it makes no difference that those actions are, by operation of law, treated, for certain purposes, as actions *ex contractu. Rajmal* v. *Hanmant, I. L. R. 20 Bom. 697*, considered. CECIL GRAY *v.* THE CANTONMENT COMMITTEE OF POONA (1910)
I. L. R. 34 Bom. 583

CAPACITY OF PARTIES TO SUE.

——— *Res judicata—Capacity of parties—Matter substantially in issue—Civil Procedure Code (Act XIV of 1882), s. 13.* If a plaintiff is suing in a capacity in which he is a stranger to the capacity in which he sued in a former suit, his claim has no proper connection with that former suit, and the Civil Procedure Code (Act XIV of 1882), s. 13 does not apply. HARGOVAN RAMJI MULJI HARJIVAN (1909)
I. L. R. 34 Bom. 416

CARRIER.

——— Liability of—*Construction of contract—Consignor bound by ordinary train arrangements made by Company.* A consigned certain cotton by railway from *E* station to *K* station. Under the terms of the risk-note signed by the consignor, the company was exempted from liability for any loss *before, during or after transit over the Railway.* Under the train arrangements made by the Railway Company, goods consigned from *E* to *K* were carried beyond *K* to *C*, and then back from *C* to *K*. The goods were damaged while at *C*. In a suit to recover compensation for the loss so caused:—*Held*, that the loss occurred during transit from *E* to *K* and that the company was protected by the terms of the risk-note. Every customer dealing with a company is bound not only by the ordinary route but also by the ordinary train arrangements according to which it professes to carry. *Tobin* v. *London & North-Western Railway Company, 2 Ir. Rep. 22, 35*, referred to. ARUNA-

CARRIER—*concld.*

CHELLAM CHETTIAR *v.* THE MADRAS RAILWAY COMPANY (1909) . I. L. R. 33 Mad. 120

CASH ALLOWANCE.

——— *Tastik—Arrears of cash allowance, suit to recover—Limitation Act (XV of 1877), Sch. II. Arts. 131, 62.* The plaintiff, the manager of the temple of Shri Laxmi Narayan Dev at Hulekal, sued to recover from the defendants, the managers of the temple of Shree Madhukeshwar at Banawasi, a sum of R96 as arrears of a cash allowance (tastik) which the former was entitled to receive from the property of the latter. The defendants admitted the title of the plaintiff to the allowance but pleaded limitation as to the arrears for two out of the six years The lower Courts applied Art. 131 of the Limitation Act, 1877, and allowed the whole of the claim On appeal: *Held*, that the claim was properly allowed A cash allowance of the nature as in the present case is, according to Hindu law, *nibandha* or immoveable property; where it is annually payable, the right to payment gives to the person entitled a periodically recurring right as against the person liable to pay. The right to any amount which has become payable stands as to such person on the same footing as the aggregate of rights to amounts which are to become payable and which have become actually due. But where there are more than one person entitled to the payment as co-sharer and the payment is made to one of them by the person liable to pay, the co-sharer receiving the amount holds it, minus his share, on behalf of the rest as money had and received for their use though as to him with reference to the aggregate of rights, it is *nibandha* or immoveable property, in the nature of a periodically recurring right. The important question is who is the person sued and what is it that is sued for? If what is sued for is the establishment of a title to the right itself, then Art. 131 applies, whether the defendant is the person originally liable to pay or is a co-sharer who has received payment from that person. If, on the other land, what is sued for is the amount of arrears, which has become actually payable to the plaintiff, then there is a distinction between the person originally liable to pay and a co-sharer of the plaintiff, who has actually received payment from that person. Art. 131 applies in that case to the person originally liable to pay and Art. 62 applies to the co-sharer who has received the payment. SAKHARAM HARI *v.* LAXMIPRIYA TIRTHA SWAMI (1909) . . I. L. R. 34 Bom. 349

CASTE QUESTION.

1. ——— *Regulation II of 1827, s. 21—Caste question—Civil Court Jurisdiction—Suit to be declared Ayya of Hiremath and to restrain defendant from so styling himself* The plaintiff sued to obtain a declaration that he was entitled to the fees and privileges appertaining to the Hiremath at Kamalapur by reason of his title to be called the Ayya of that Hiremath, and to obtain a prepetual injunction to restrain the

defendant from using the name of " Ayya of Hiremath " The plaintiff's complaint was that the defendant had assumed a name to which the plaintiff had the exclusive right, and that that assumption would enable, as it had enabled, the defendant to attract to himself a large number of the plaintiff's followers, and thereby appropriate to himself fees, which would otherwise have been paid to the plaintiff *Held*, that it was a claim to a caste-office and to be entitled to perform the honorary duties of that office or to enjoy certain privileges and honors at the hands of the members of the caste in virtue of that office. It was a caste question not cognizable by a Civil Court *Held*, also, that the fact that there had been no allegation of any specific damage by reason of the assumption by the defendant of the name of Ayya of Hiremath, and also the admission that after all the result of the assumption of that name would be merely to enable some of the followers of the plaintiff to go over to the defendant showed that what the parties had been fighting for was merely a question of dignity under the cover of a religious office. If the Court were to interfere in such cases, it would be merely assisting one party at the expense of the other and compelling the caste or the sect to follow one spiritual leader in preference to another. GADIGEYA *v* BASAYA (1910) . . . . **I. L. R. 34 Bom. 455**

2. ——————— *Caste—Trustee of caste funds—Extent of right to inspect documents—Demand and refusal—Jurisdiction of Civil Courts in caste questions—Application of Indian Trusts Act (II of 1882), ss. 5 and 6, to creation of trusts of caste funds—Civil Procedure Code (Act V of 1908), s. 151.* As a result of dissensions in a Hindu caste a suit was filed by the plaintiff, a trustee of certain caste funds and member of the Managing Committee, against the defendant, a co-trustee and the President of that Committee. The plaintiff prayed for a declaration that he had the right to inspect all books and documents of the Mahajan Managing Committee, Sub-Committee and Trustees, and for an injunction restraining the defendant from interfering with him in the exercise of such right. The only two documents about which there was any real controversy were the minutes of the Sub-Committee and the correspondence file of the Mahajan. *Held*, that as trustee of the Derasar and Sadharan funds, the plaintiff had no right, either in law or by virtue of any caste rules, to the roving inspection claimed. *Bank of Bombay* v *Suleman, I. L. R 32 Bom. 466, 474*, referred to *Held*, further, that the Mahajan fund of this caste being a purely secular fund the Indian Trust Act applied, and the plaintiff could not claim to have been made a trustee of that fund merely by virtue of a caste resolution and his own letter of acceptance. *Held*, further, on the evidence, that there had been no express demand addressed by the plaintiff to the proper quarter, and no refusal by the defendant such as would be necessary to enable a suit of this character to succeed. *Held*, further, that where rights to property are not involved all matters of

internal management must be left to the decision of the caste. The question in dispute was in reality a question between the caste and a section, apparently a small section, of the caste led by the plaintiff, and as such it was outside the Court's jurisdiction in accordance with the decision in *Nemchand* v *Savaichand, I. L. R. 5 Bom. 85; Lalji Shamji* v. *Walji Wardhman, I. L. R. 19 Bom. 507*, referred to and distinguished *Held*, lastly, that when according to well established principles certain questions have been removed from the jurisdiction of the Court, they cannot be brought within the jurisdiction under s. 151 of the Civil Procedure Code (Act V of 1908). JETHABHAI NARSEY *v.* CHAPSEY COOVERJI (1909) **I. L. R. 34 Bom. 467**

CASTE USAGE.

See DEFAMATION . **I. L. R. 33 Mad. 67**

CAUSE OF ACTION.

See CIVIL PROCEDURE CODE (ACT V OF 1908), S 9 . **I. L. R. 32 All. 527**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O XXXIII, RR 1, 2 AND 5. **I. L. R. 34 Bom. 638**

See CONTRACT ACT, SS 39, 73, 120 **I. L. R. 34 Bom. 192**

See FRAUD . . **14 C. W. N. 695**

See HINDU LAW—SUCCESSION. **I. L. R. 32 All. 594**

See LETTERS PATENT, CLS 12 AND 14. **I. L. R. 34 Bom. 564**

See MALICIOUS PROSECUTION. **I. L. R. 37 Calc. 358**

See SPECIFIC RELIEF ACT (1 OF 1877) S 42 . . **I. L. R. 32 All. 316**

CAVEAT EMPTOR.

——————— doctrine of—

See SALE IN EXECUTION OF DECREE. **I. L. R. 37 Calc. 67**

CAVEATOR.

See PROBATE AND ADMINISTRATION ACT S 81 . . **I. L. R. 34 Bom. 459**

CENTRAL PROVINCES LAND REVENUE ACT (XVIII OF 1881).

——————— **s. 78**—*Central Provinces Land Revenue Act (XVIII of 1881), ss. 78, 82, 83, 120 (b), 152, sub-s. (b), cl. (12)—S. 69, sub-s. (4) contrasted—Record-of-rights, entry in—Suit to correct as provided in s. 83 not instituted—Entry if becomes final and conclusive—Title-suits by party affected, if maintainable—" Presumption of correctness until the contrary is shown."* When an entry has been made in the record-of-rights as to any matter referred to in s. 78 of the Central Provinces Land Revenue Act (XVIII of 1881), such entry is presumed under s. 82 to be correct until the contrary

CENTRAL PROVINCES LAND REVENUE ACT (XVIII OF 1881)—*concld.*

——— s. 78—*contd.*

is shown; and under s. 83, a person aggrieved by the entry may institute a suit in the Civil Court to have such entry cancelled or amended, but it does not follow that the "contrary" referred to in s. 82 can be proved in such a suit only and not otherwise. Cl (12) of sub-s (*b*) of s 152 of the Act means only that the entry cannot be corrected except by the Revenue Authorities, but it does not preclude a suit by the person affected by the entry to establish his title in the Civil Court. The remedy provided by s 83 of the Act is cumulative and not exclusive. *Held*, that the present suit by the plaintiff in which he sought relief, *inter alia*, on the basis of his alleged title as occupancy-tenant was maintainable, although the defendant's name had been entered as the occupancy-tenant in the record-of-rights, and the plaintiff had not instituted a suit under s. 83 for the cancellation or amendment of the entry. DIBAKAR BISI *v* CHATTO BAG (1908). . . . . **14 C. W. N. 686**

——— ss. 112, 138.

See LAMBARDAR . **I. L. R. 37 Calc. 694**

CERTIFICATE OF COLLECTOR.

See PENSIONS ACT, 1871, ss 6, 8, 11.
I. L. R. 34 Bom. 154

CERTIFICATE OF SALE.

——— *Revenue Court, jurisdiction of—Public Demands Recovery Act (Beng. I of 1895), ss 12, 15, 17, 24, 26—Sale by Collector, while deposit in treasury—Sale by Revenue Authorities without jurisdiction—Validity of sale against bonâ-fide purchaser without notice—Whether civil suit lies to set aside sale—Speculative Purchaser—Hardship.* A certificate which has been properly made for arrears actually due can be cancelled or modified only on the ground that the amount stated was either never due, or, if due, had been paid before the certificate was made; and ss. 12 and 15 of the Public Demands Recovery Act do not apply when the sale is held without jurisdiction, the amount due under the certificate having been paid before the sale. When the sale was held by the Revenue Authorities without jurisdiction, it cannot be treated as one made under the provisions of the Public Demands Recovery Act, and may consequently be challenged by a civil suit without recourse to procedure provided by the Act. *Balkishen Das* v. *Simpson, I. L. R. 25 Calc. 833, Baijnath Sahu* v *Lala Sital Prasad, 2 B. L. R. F. B. 1, 10 W. R. F. B. 66*, and *Harkhoo Singh* v. *Bunsidhur Singh, I. L. R. 25 Calc. 876*, followed. Where a sale has taken place on the basis of a satisfied judgment, the satisfaction of which has been certified to the Court, the sale is void and ineffectual to pass any title even to a *bonâ fide* purchaser for value without notice. A Certificate Officer has authority to sell only so long as the certificate remains unpaid, and a duty is cast upon him by

CERTIFICATE OF SALE—*concld.*

law to enter satisfaction as soon as payment has been made *Rewa Mahton* v. *Ram Kishen Singh, I. L. R. 14 Calc 18, L R. 13 I. A. 106, Mothura Mohun* v. *Akhoy Kumar, I. L. R. 15 Calc 557*, and *Yellappa* v. *Ramchandra, I. L R. 21 Bom. 463*, distinguished. No case of hardship arises where a person with eyes open makes a speculative purchase of a valuable estate for a nominal price. *Baijnath* v. *Ramgut, 5 C. L. J 667*, affirmed by the Judicial Committee, *I. L. R. 23 Calc. 775*, followed. JANAKDHARI LAL *v.* GOSSAIN LAL BHAYA GAYWAL (1909)
I. L. R. 37 Calc. 107

CERTIFICATE TO COLLECT DEBTS.

See SUCCESSION CERTIFICATE ACT (VII OF 1889), SS 4 AND 7.
I. L. R. 32 All. 385

CESS.

See U. P LAND REVENUE ACT (III OF 1901), ss. 56, 86.
I. L. R. 32 All. 193

CHAMPERTY.

——— *Agreement against public policy—Fair agreement to supply funds to carry on suit.* Although the English law of champerty does not apply in India, champerty or maintenance to be open to objection must have the qualities attributed to it by the English law, that is, it must be something against policy and justice, something tending to promote unnecessary litigation, something that in a legal sense is immoral and to the constitution of which a bad motive is in the same sense necessary. To determine that, it is necessary to look at the substance and not merely the language of the instrument. *Fischer* v. *Kamala Naicker, 8 Moo I A. 170, 187*, followed. The test to be applied is whether the transaction is merely the acquisition of an interest in the subject of the litigation *bonâ fide* entered into, or whether it is an unfair or illegitimate transaction got up for the purpose merely of spoil or litigation, disturbing the peace of families and carried on from a corrupt or improper motive. *Chedambara Chetty* v. *Renga Krishna, L. R. 1 I. A. 241, 264*, followed A fair agreement to supply funds to carry on a suit in consideration of having a share in the property if recovered, ought not to be regarded as *per se* opposed to public policy. But agreements of this kind ought to be carefully watched. *Ram Coomar Koondu* v. *Chunder Kant Mookerjee, L R 4 I A 24*, followed. GOSSAIN RAMDHUN PURI *v* GOSSAIN DALMIR PURI (1909)
14 C. W. N. 191

CHARGE.

——— misjoinder of—

See CRIMINAL PROCEDURE CODE, SS. 233—236, 239 . . **I. L. R. 32 All. 219**

See CRIMINAL PROCEDURE CODE, SS. 234, 235, 537 . . **I. L. R. 32 All. 57**

CHARGING ORDER.

——— *Practice—Dissolution of partnership—Assets in hands of receiver—Judgment creditor—Solicitor's lien for costs.* The rule at common law that a solicitor is entitled to a lien for his costs on property recovered or preserved by his exertions has always been followed by this Court; and, where there are assets of a partnership in the hands of a receiver appointed in a partnership suit, the solicitors engaged in that suit are entitled to ask for a charge on those assets in priority to the creditors of the partnership. *Ridd* v *Thorne*, [*1902*] *2 Ch 344*, followed. Where a plaintiff has obtained a decree against a partnership firm, the available assets of which are in the hands of a receiver appointed in a previous partnership suit, his proper course is not to issue execution against those assets, but to ask the Court for a charging order, and to undertake to deal with the charge according to the order of the Court. *Kewney* v. *Attrill*, *34 Ch. D. 345*, followed. A. HAJI ISMAIL AND Co *v* RABIABAI (1909)
I. L. R. 34 Bom. 484

CHARTER ACT (24 & 25 VIC., C. 104).

——— **s. 15.**

See INTERLOCUTORY ORDER
14 C. W. N. 147

CHAUKIDARI-CHAKRAN LAND.

1. ——— **Resumption and transfer to zemindar**—*Putnidar's right to claim settlement for zemindar—Suit, virtually for specific performance—Conditions which zemindar may impose—Equitable defence—Liability of putnidar to pay amount of assessment by Collector and part of the profits.* A suit by a putnidar against his zemindar for recovery of resumed chaukidari-chakran lands brought on the ground that under the terms of the putni the putnidar became entitled to the chaukidari-chakran lands as soon as they were transferred by the Government to the zemindar, is virtually a suit for specific performance of contract. The zemindar would be equitably entitled to refuse settlement asked by the putnidar unless the putnidar agreed to the conditions as to payment of the assessment made by the Collector and a proportionate share in the profits such as the zemindar would in the circumstances be entitled to impose on him *Semble*: It is not correct to hold that the putnidar is not bound to pay to the zemindar more than the assessment made by the Collector. *Kazi Newaz Khoda* v. *Surendra Nath De*, *5 C L. J. 33*: *s c. 11 C. W. N. 201*, *Hari Narain Mozumdar* v. *Mukund Lal Mundal*, *4 C. W. N. 814*, referred to. RAJENDRA NATH MUKERJEE *v* HIRA LAL MUKERJEE (1910)
14 C. W. N. 995

2. ——— *Village Chaukidari Act (Bengal VI of 1870), s. 49—Assessment of rent by Collector—Right of landlord to claim fair and equitable rent.* The right of a landlord to claim rent, when making a settlement of resumed chaukidari-chakran lands with a putnidar, is not restricted to the amount of assessment made by the Collector under s. 49 of the Village Chaukidari Act (Beng. Act VI of 1870); he is entitled to claim a fair and equitable rent. *Hari Narain Mozumdar* v *Mukund Lal Mundal*, *4 C. W. N 814*, and *Kazi Newaz Khoda* v *Ram Jadu Dey*, *I L. R 34 Calc. 169*; *5 C. L J 23*, referred to. GOPENDRA CHANDRA MITTER *v* TARAPRASSANNA MUKERJEE (1910) . **I. L. R. 37 Calc. 598**

3. ——— *Bengal Act VI of 1870 s 50—Resumption and transfer by Government—Rights of patnidars and dar-patnidars—Suit for recovery of khas possession—Frame of suit—Specific performance of contract—Landlord and tenant.* Where chaukidari-chakran lands had been resumed by the Government and settled under s. 50 of Bengal Act VI of 1870, with a zemindar who had created a patni under which there was a dar-patni and who made a raiyati settlement, and the dar-patnidars brought a suit against the zemindar for khas possession of the lands and for the execution of a deed of transfer, on the allegation that the zemindar had transferred his rights in the said lands to the patnidars and the patnidars had similarly transferred all their rights, subject, of course, to the payment of the respective head rents —*Held*, that the joining of the two prayers for execution of a deed of transfer and for recovery of possession was in no way repugnant to any rule of law. *Nathu Pandu* v. *Budhu Bhika*, *I. L. R. 18 Bom. 537*, and *Narayana Kavirayan* v. *Kandasami Goundan*, *I. L. R. 22 Mad. 24*, referred to. RANJIT SINGH *v.* KALIDASI DEBI (1900)
I. L. R. 37 Calc. 57

CHELA.

See HINDU LAW—SUCCESSION.
14 C. W. N. 191

CHIEF JUDGE, SMALL CAUSE COURT.

——— **jurisdiction and discretion of—**

See SPECIFIC RELIEF ACT (I OF 1877), s. 45 . **I. L. R. 34 Bom. 659**

CHILDLESS WIDOW.

——— **property of—**

See HINDU LAW—AYAUTUKA STRIDHAN.
I. L. R. 37 Calc. 863

CHOTA NAGPUR LANDLORD AND TENANT PROCEDURE ACT (BENG. I OF 1879).

——— **s. 6**—*Chota Nagpur Landlord and Tenant Procedure Act (Beng. I of 1879), s. 6—Non-occupancy raiyat, position of, after notice to quit—Trespasser—Occupancy right.* After the service of a valid notice to quit, a non-occupancy raiyat holding land under the Chota Nagpur Landlord and Tenant Procedure Act of 1879 became a trespasser, and the fact that when the suit for ejectment consequent upon the notice was instituted, the raiyat had been already holding

CHOTA NAGPUR LANDLORD AND TENANT PROCEDURE ACT (BENG. I OF 1879)—*concld.*

——— **s. 6**—*concld.*

the land for 12 years did not entitle the raiyat to claim occupancy rights. *Sheikh Khossal* v. *Sheikh Shukhoudee, 1 W. R. 119, Aymel Islam* v *Jardine Skinner & Co, 8 W. R. 101; Janardun Acharjee* v. *Haradhun Acharjee, 9 W. R 513, Mackintosh* v. *Gopee Mohun Mojoomdar, 4 W. R 24, Gale* v. *Maharanee Sreemutty, 15 W. R. 133,* considered. NATHUNI RAM *v.* RAJA PARESH NATH SINGH (1909) **14 C. W. N. 297**

CHUR LANDS.

See LANDLORD AND TENANT . **I. L. R. 37 Calc. 449**

CITY MUNICIPAL ACT (MAD. III OF 1904).

See MADRAS CITY MUNICIPAL ACT.

——— **s. 120**—'*Exercising a trade,' what amounts to.* Where a person has a servant at *A's* who purchases piece-goods there and forwards them to B, where they are sold and the profits are earned, such person 'exercises his trade,' within the meaning of s. 120 of the Madras City Municipal Act at B and not at A. There may be kinds of business in which the buying of goods is the most important part of the business and in such cases it cannot be said that the profits are earned elsewhere. HAJEE SHAIK MEERA ROWTHER *v.* THE PRESIDENT OF THE CORPORATION OF MADRAS (1909) . **I. L. R. 33 Mad. 82**

CITY OF BOMBAY MUNICIPAL ACT.

See BOMBAY MUNICIPAL ACT (III OF 1888).

CITY POLICE ACT (MAD. III OF 1888).

See MADRAS CITY POLICE ACT.

——— **s. 75**—*Arrack shop is a place of "public resort" within section.* The public have a right, under the terms of the license granted to arrack shopkeepers, to resort to such shops and such shops are places of public resort within the meaning of s. 75 of the Madras City Police Act III of 1888. THE CROWN PROSECUTOR *v* MOONOOSAMY (1909) . **I. L. R. 33 Mad. 83**

CIVIL COURT.

See JURISDICTION OF CIVIL COURTS.

——— **urisdiction of—**

See ASSESSMENT . **I. L. R. 37 Calc. 374**

CIVIL AND REVENUE COURTS.

See AGRA TENANCY ACT (II OF 1901), s. 199 . **I. L. R. 32 All. 8**

CIVIL COURTS ACT (MAD. III OF 1873).

See MADRAS CIVIL COURTS ACT.

CIVIL COURTS ACT (MAD. III OF 1873)—*concld.*

——— **s. 16—Marriage**—*Hindu Law—Validity of marriage of Hindu with Christian women converted to Hindu religion—Such marriage valid if recognised by the usage of the particular caste, though opposed to orthodox Hindu tenets—Suit, abatement of—Suit by reversioner for declaration on behalf of all reversioners does not abate on death of plaintiff.* A marriage contracted according to Hindu rites by a Hindu with a Christian woman who, before marriage, is converted to Hinduism, is valid when such marriages are common among and recognised as valid by the custom of the caste to which the man belongs, although such marriage may not be in strict accordance with the orthodox Hindu religion. Under the Hindu system of Law, clear proof of usage will outweigh the written text of the Law. Under s. 16 of Madras Act III of 1873, any proved custom concerning marriage must be upheld. Apart from custom, such a marriage between parties who do not belong to the twice-born classes, is valid under Hindu Law. It is only persons who belong to the twice-born classes that are enjoined to marry in their own class. All other persons must be treated as Sudras and marriages between members of different classes of Sudras are valid. Where a caste accepts a marriage as valid and treats the parties thereto as members of the caste, the Court will not declare such a marriage null and void. A declaratory suit by a reversioner brought not only on his own behalf but on behalf of the body of reversioners, does not abate on the death of the plaintiff. MUTHUSAMI MUDALIAR *v* MASILAMANI (1909) **I. L. R. 33 Mad. 342**

CIVIL PROCEDURE CODE (ACT VIII OF 1859).

——— **s. 15**—*15 and 16 Vict., c. 86, s. 50—Specific Relief Act (I of 1877), s. 42—Suit by plaintiff for mere declaration that the minor defendant was not his son—Investigation of claim without delay* A talukdar-plaintiff brought a suit for a declaration that defendant No. 2, a minor, was not his son and that he was born to the plaintiff's wife, defendant No. 1, and for an injunction restraining defendant No. 1 from proclaiming to the world that defendant No. 2 was plaintiff's son, and from claiming maintenance for him as such son. The defendants contended that the suit was not maintainable under the provisions of the Specific Relief Act (I of 1877), and that it was premature. *Held,* that the suit was maintainable, it being within the provisions of s 42 of the Specific Relief Act (I of 1877). *Held,* further, that in the interests of justice it was of the highest importance that such claims should be investigated and decided without unnecessary delay, and when the controversy had once been brought to trial the decision should ordinarily follow the usual course. *Yool* v. *Ewing, Ir. Rep. 1 Ch. 434,* distinguished. BAI SHRI VAKTUBA *v.* THAKORE AGARSINGHJI RAISINGHJI 1910) . . . **I. L. R. 34 Bom. 676**

CIVIL PROCEDURE CODE (ACT XIV OF 1882).

——— ss. 2, 102.

See AGRA TENANCY ACT (II OF 1901), SS. 176 AND 177 . I. L. R. 32 All. 373

——— ss. 2, 474—Interpleader suit—*Order dismissing interpleader suit as not maintainable appealable as a decree within the meaning of s. 2—Under what circumstances a tenant can bring an interpleader suit against his landlord* An order dismissing an interpleader suit is a decree within the meaning of s. 2 of the Code of Civil Procedure (Act XIV of 1882) and is as such appealable The prohibition in s. 474 of the Code of Civil Procedure against a tenant bringing a suit against his landlord and compelling him to interplead with another person, not claiming through him does not apply where the title of the landlord to grant the lease is not disputed but it is alleged by such other person that the landlord only acted as trustee in granting such lease. *A* granted a lease of certain villages in favour of his wife *B*. *B* sub-leased them to *C*. After *A's* death, his son *D*, alleging that the lease to *B* was colourable and was for *A's* benefit, gave notice to *C* claiming the rents of the villages. The assigns of *B* also claimed the rents from *C*. *Held*, that *C* was entitled to maintain an interpleader suit against the assigns of *B* and *D* *Dungey* v. *Angove, 30 E R. 644*, referred to. The title of *B* and her assigns was derivative from *A* and consistent with it Neither *C* nor *D* denied the title of *B* to grant the lease, the only question being whether *B* acted in her own right or as trustee for *A*—a question with which *C* had no concern. *Held*, that *D* claimed through *B* within the meaning of s. 474 of the Code of Civil Procedure, as his claim was to stand in the shoes of *B* ORR *v* CHIDAMBARAM CHETTIAR (1909) I. L. R. 33 Mad. 220

——— s. 13.

See CAPACITY OF PARTIES TO SUE I. L. R. 34 Bom. 416

See RES JUDICATA I. L. R. 34 Bom. 416

1. ——— Suit for redemption—*Res judicata—Mortgage—Decree for redemption not providing for extinction of mortgagor's rights upon non-payment—Second suit for redemption* Where a mortgagor brings a suit for redemption and obtains a conditional decree but omits to fulfil the condition imposed upon him, he is not debarred from bringing a second suit for redemption unless the decree lays down that if he fails to fulfil these conditions the property will be sold or he will be debarred of all his rights to redeem. *Rugad Singh* v. *Sat Narain Singh, I. L. R. 27 All, 178*, distinguished. NAKTA RAM *v.* CHIRANJI LAL (1910) I. L. R. 32 All. 215

2. ——— Mulgeni tenure—Estoppel—*Person claiming under, who is—Tests to determine interest represented—Landlord does not represent interest of mulgeni tenant—Estoppel—No estoppel where party not misled.* The mulgeni tenure is a permanent heritable tenure and mulgeni interest is not an interest subordinate to that of the lessor. In order to estop a party in a subsequent suit by the decision in a former suit against another party on the ground that the former claims under the latter within the meaning of s. 13 of the Civil Procedure Code, it must be shown that the party in the former suit represented the interest claimed in the latter suit. A party represents all interests owned by him at the time of the action as also interests belonging to others which are subordinate to his A decision against him will bind interests acquired from him subsequently and all subordinate interests whensoever acquired A mulgeni tenant will not be bound by a decision against his lessor as his interest is not subordinate to that of the lessor To estop a party, it must be shown that his acts or representations misled the party setting up the estoppel SESHAPPAYA *v* VENKATRAMANA UPADYA (1910) I. L. R. 33 Mad. 459

3. ——— Capacity of parties—*Res judicata—Matter substantially in issue* The plaintiff in conjunction with another had in 1902 filed a suit against the defendant for possession of certain property, basing his claim on the allegation that he was owner. He succeeded in the first Court, but the Court of Appeal held that the property had been dedicated to charity, and refused to uphold his claim as owner. The plaintiff declined to adopt the Court's suggestion to modify his claim and be content to ask for a decree for possession as manager, and his suit was therefore dismissed. Five years later he filed the present suit, claiming possession as manager. *Held*, that his title as manager was one which might and ought to have been put forward in the previous suit, and that his present claim was therefore *res judicata*. If a plaintiff is suing in a capacity in which he is a stranger to the capacity in which he sued in a former suit, his claim has no proper connection with that former suit, and the Civil Procedure Code (Act XIV of 1882), s. 13, does not apply. HARGOVAN RAMJI *v.* MULJI MARJIVAN (1909) I. L. R. 34 Bom. 416

4. ——— ss. 13, 30—*Decree in suits under s. 30—Order in execution not binding on persons not actually brought on record—Res judicata—When judgments obtained in one capacity binding on the same persons in another capacity.* Where a party to a suit is allowed to represent others under s. 30 of the Civil Procedure Code, the decree will be binding on those whom he is allowed to represent. But an injunction is personal in its nature, and where such a party disobeys an injunction and is proceeded against in execution for such disobedience, an order in such proceedings will not be binding on those whom he was allowed to represent in the suit. Where a trustee is a member of a sect and his rights as trustee are linked with and subordinate to the rights of the sect, a decision on the rights

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd.*

——— **ss. 13, 30**—*concld.*

of his sect fairly obtained in a suit between his sect and a rival sect will be binding on him in his special capacity as trustee in a subsequent suit between him in such capacity and the rival sect Judgments *in personam* in general bind only parties and their privies But the relation established between them by a judgment is, in the absence of fraud or collusion, conclusive against third parties. SRINIVASA AIYANGAR *v.* ARAYAR SRINIVASA AIYANGAR (1910) **I. L. R. 33 Mad. 483**

——— **ss. 13, 43**—*Mortgage—Prior and subsequent mortgagees—Mortgaged property brought to sale and purchased by each mortgagee separately, the other not being made a party—Suit by prior mortgagee to bring to sale part of the mortgaged property in the hands of the subsequent mortgagee to recover unsatisfied balance of the mortgage debt.* The prior mortgagee of mortgaged property brought the whole of it to sale without impleading the subsequent mortgagee of a portion and purchased the mortgaged property himself. The subsequent mortgagee in turn brought a portion of the mortgaged property to sale without impleading the prior mortgagee and also himself became the purchaser. The prior mortgagee, after an unsuccessful attempt to recover from the subsequent mortgagee possession of the mortgaged property so purchased, sued to bring that property to sale for the realization of the unrecovered balance of the original mortgage money. *Held*, that the suit was maintainable and was not barred by either s. 13 or s 43 of the Code of Civil Procedure (1882). SHAM DEI *v* BALJIT SINGH (1909) **I. L. R. 32 All. 119**

——— **ss. 13, 525, 526**—*Res judicata—Order refusing to file an award on the ground of misconduct of arbitrators—Subsequent suit to enforce the award. Held*, that the refusal of a Court to file a private award on the ground of misconduct of the arbitrators will not operate as *res judicata* in respect of a subsequent suit brought to enforce the award. *Bhola* v. *Govind Dayal, I. L. R. 6 All. 186, Kalik Ram* v. *Babu Lal, All. Weekly Notes (1903) 34*, and *Basant Lal* v. *Kunji Lal, I. L. R. 18 All. 21*, followed. *Ghulam Khan* v. *Muhammad Hossain, I. L. R. 29 Calc. 167*, referred to. KUNJI LAL *v.* DURGA PRASAD (1910) **I. L. R. 32 All. 484**

——— **s. 15**—S 15 of the Civil Procedure Code (Act XIV of 1882) referred to procedure only and did not affect the jurisdiction of Courts of higher grade. TANJOR MAJHI *v* JALADHAR DEARI (1909) . . **14 C. W. N. 322**

——— **s. 30**—*Parties—Persons having the same interest in the subject-matter of the suit* Where numerous persons are similarly interested in the subject-matter of a suit, a suit brought by one or more of such persons for the protection of the rights of all is not bad because the plaintiffs

CIVIL PROCEDURE CODE ACT (XIV OF 1882)—*contd.*

——— **s. 30**—*concld.*

may not have obtained the permission of the Court under s. 30 of the Code of Civil Procedure, 1882, to sue on behalf of all the persons so interested. *Zafaryab Ali* v. *Bakhtawar Singh, I. L. R. 5 All. 497*, and *Baiju Lal Parbatia* v. *Balak Lal Pathuk, I. L. R. 24 Calc. 315*, followed. GULBA *v.* BASANTA (1910) . . **I. L. R. 32 All. 284**

——— **ss. 30, 375**—*Subsequent suit filed after breach of condition on which permission to withdraw previous suit given—Right of one not a tenant to sue for himself and other tenants under s 30, Civil Procedure Code* Where permission to withdraw from a suit with leave to bring a fresh suit was given to a party, on condition of costs being paid within a certain time, such party, on failing to fulfil the conditions, is precluded from bringing a fresh suit. *Abdul Aziz Molla* v. *Ebrahim Molla, I L. R. 31 Calc 965*, distinguished. A person, who is not a tenant, cannot maintain a suit on behalf of tenants under s. 30, Civil Procedure Code. ROBERT FISHER *v.* NAGAPPA MUDALY (1909) **I. L. R. 33. Mad. 258**

——— **s. 31.**

See LIMITATION ACT, 1877, ss. 22, 28 **I. L. R 34 Bom. 91**

——— **ss. 32, 53, 582.**

See PARTIES . **I. L. R. 37 Calc. 229**

——— **s. 43.**

See MORTGAGE . **I. L. R. 37 Calc. 589**

1. ——— *Portion of claim—Intentional omission—Civil Procedure Code (1908), order II, rule 2 (2).* *G*, who was the tenant of a holding, died, leaving a mother and a daughter, both of the same name. The plaintiff sued the mother, as representing *G*, for arrears of rent for 1313 Fasli and obtained an *ex parte* decree. In respect of the year 1314 he sued the daughter and obtained a decree. The decree in respect of 1313 was set aside and at the rehearing the daughter was made a party. It was found that at the time the plaintiff brought the suit in respect of 1314 he was not aware that the daughter was the tenant in 1313. *Held*, that the plaintiff having no knowledge, when he brought his suit in respect of 1314, that the daughter was the tenant in 1313, could not be said to have omitted to sue in respect of that year and the suit for 1314 was not barred by the provisions of s 43 of the Code of Civil Procedure (1882). *Amanat Bibi* v. *Imdad Husain, L. R 15 I A 106 : I. L. R 15 Calc. 800*, referred to BATUL KUNWAR *v.* MUNNI LAL (1910) . . . . **I. L. R. 32 All. 625**

2. ——— *Contract Act, s. 43—Omission of part of cause of action in a suit against a joint promisor—Effect of such omission in subsequent suit against other promisors.* The omission in a previous suit against one of several joint promisors of a part of the cause of action is no

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd.*

——— **s. 43**—*concld.*

bar under s. 43 of the Civil Procedure Code to a subsequent suit against another joint promisor for the portion so omitted. The subsequent suit will not be barred by the rule laid down in *King* v. *Hoare, 13 M. & W. 494*, as that rule is based on the merger of the cause of action in the judgment. There can be no such merger when the cause of action has not been sued upon. The effect of s. 43 of the Indian Contract Act on the rule laid down in *King* v. *Hoare, 13 M. & W. 494*, that a judgment against one of several joint promisors is a bar to a suit against the others, considered. RAMANJULU NAIDU *v* ARAVAMUDU AIYANGAR (1909) . . . **I. L. R. 33 Mad. 317**

——— **ss. 43 and 50**—*Transfer of Property Act (IV of 1882), s. 90—Suit to recover mortgage debt by sale of mortgaged and unhypothecated property—Decree against mortgaged property alone—Sale—Amount realised not sufficient—Application for supplemental decree to recover balance by sale of other property—Limitation—Putting forward allegations at a late stage.* In a suit upon a mortgage dated the 18th April 1887 the plaintiff claimed, on the 18th April 1899, to recover the mortgage-debt by sale of the mortgaged property and the balance, if any, from the non-hypothecated property of the mortgagor. The decree was passed in plaintiff's favour against the mortgaged property alone. The amount realised by the sale of the mortgaged property being insufficient to satisfy the decree, the plaintiff applied under s. 90 of the Transfer of Property Act (IV of 1882) for a supplemental decree against the other property of the mortgagor. The first Court found that the claim for a personal decree against the mortgagor was time-barred. On appeal by the plaintiff he attempted to prove that the claim was within time owing to an intermediate payment by the defendant but the Appellate Court found that the plaintiff failed in his attempt and confirmed the decree. On second appeal by the plaintiff: *Held*, confirming the decree, that the mortgage in suit being of the year 1887 and the suit of the year 1899, the plaintiff's right to a personal decree against the mortgagor was time-barred, the plaintiff having failed to show the ground on which exemption from the law of limitation was claimed. *Held*, further, that the plaintiff could not be allowed at a late stage of the suit to bring forward for the first time allegations which it was necessary to prove in order to show that he was entitled to a further decree against the defendant personally. GULAM HUSSEIN *v* MAHAMADALLI IBRAHIMJI (1910) **I. L. R. 34 Bom. 540**

——— **44, 45.**

See PRE-EMPTION . **I. L. R. 32 All. 14**

——— **s. 53**—*Amendment of plaint by referring to document not included in list of documents relied on.* At the hearing of a suit brought by the plaintiff for the recovery of a sum due at the foot of an account the defendant raised a plea of limitation. The plaintiff thereupon applied for leave to amend his plaint by setting out an acknowledgment in writing signed by the defendant within the period of limitation. The lower Court refused the application. On appeal:—*Held*, that the amendment should have been allowed. GUNNAJI BHAWAJI *v.* MAKANJI KHOOSALCHAND (1909) **I. L. R. 34 Bom. 350**

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd.*

——— **s. 53**—*concld.*

——— **s. 54**—*Power of Court to extend time allowed—Time, if may be extended ex poste facto. Court Fees Act (VII of 1870), s. 26—Limitation* The Court has the power to extend the time allowed by it to put in deficit court-fees *ex poste facto*. A plaint was filed one day before the last day of limitation on an insufficiently stamped paper and the Court allowed a week's time to put in the balance of court-fee The court-fee was put in one day later than the time allowed and later on a petition was put in praying for extension of time and the plaint was registered: *Held*, that this amounted to an extension of the time which the Court was quite competent to grant *Held*, further, that in the circumstances the plaintiff would have the benefit of s 28 of the Court Fees Act and the suit was not barred. AMIR HOSSAIN KHAN *v.* BABU NANAK CHAND (1910) . **14 C. W. N. 882**

——— **s. 102.**

See APPEAL . **I. L. R. 37 Calc. 426**

——— Dismissal of a suit under s. 102, Civil Procedure Code, does not operate as *res judicata* in favour of the defendant. *Chand Kour* v. *Partab Singh, L. R 15 I A. 156; s.c I. L R 16 Calc 98*, referred to. But read with s. 103 it precludes a fresh suit in respect of the same cause of action. SANKAR NATH PANDIT *v* MADAN MOHUN DAS (1909) **14 C. W. N. 298**

——— **ss. 102, 157, 158**—*Circumstances under which ss. 157 and 158 are applicable—On party's default to appear, Court must proceed under s. 157 and not under s. 158.* Ss. 157 and 158 of the Code of Civil Procedure are independent and mutually exclusive and neither can be treated as an exception to the other. When a case is set down for hearing on the original or adjourned date, the first question for the Court is "Are the parties in attendance." If both or either of the parties be not present, the Court is bound to deal with the case under Chapter VII or under that chapter read with s. 157, as the case may be, whether or not there has been default of the kind referred to in s. 158. *Shrimant Sagaji Rao* v. *Smith, I. L. R. 20 Bom. 735*, referred to. *Mariamissa* v. *Ramkalpa Goram, I. L. R. 34 Calc. 135*, referred to. CHANDRAMATHI AMMAL *v.* NARAYANASAMI AIYAR (1909) **I. L. R. 33 Mad. 241**

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd.*

——— s. 103.

See WILL . . 14 C. W. N. 924

——— *Section not applicable where plaintiff in former suit is not the plaintiff in the latter suits—Limitation Act, XV of 1877, Sch II, Art. 120—Right to sue for declaration accrues when causes of action complete* S. 103 of the Code of Civil Procedure bars a subsequent suit only when the plaintiff in the latter suit actually was, or represented by the plaintiff in the former suit Where the plaintiff in the latter suit was a contesting defendant in the former, s 103 does not bar the latter suit. The right of junior members of a tarwad to sue for a declaration that an alienation by the karnavan is not binding on the tarwad, accrues the moment the document is completed and not when the plaintiff obtains knowledge of the alienation and in the absence of fraudulent concealment a suit for such declaration will be barred under Sch. II, Art. 120 of the Limitation Act at the expiry of six years from such date. OTTAPPURAKKAL THAZHATE SOOPI *v.* CHERICHIL PALLIKKAL UPPATHUMMA (1909) . . I. L. R. 33 Mad. 31

——— s. 108.

See RIGHT OF SUIT I. L. R. 37 Calc. 197

1. ——— s. 111—*Set off—Claim for money—Amount which Defendant jointly with a third party can claim by way of contribution from plaintiff is may be set off.* A defendant is not entitled to set off against a claim for money by the plaintiff any portion of an amount in respect of which the defendant jointly with one not a party to the suit can claim contribution from the plaintiff. UMANATH DASS *v.* MONSURALI HOWLADAR (1910) 14 C. W. N. 786

2. ——— *Set off—Technical and general—Plea of payment—Set off-time of barred debts.* The words "ascertained sum" in s. 111, Civil Procedure Code, do not mean a sum admitted by the plaintiff but a sum of money the amount of which is known Where defendant set up an agreement to the effect that the rents payable on account of lands held by plaintiffs under defendants were credited to the plaintiff on account of rent due to him from the defendants. *Held*, that the plea was one of payment and of account and set off in a general sense and not one of technical set-off under s. 111, Civil Procedure Code. *Held*, further, that the true issue in the case being as stated above the case could not be disposed of by saying that there could be no "set off" in a technical sense of a time-barred debt. EDWARD DALGLEISH *v.* RAMDIN SINGH CHOWDHURY (1909) 14 C. W. N. 170

——— s. 206—*Decree of first Court reversed on appeal with costs of both Courts—Costs stated as incurred, in superseded decree, if may be recovered—Construction.* Where in decreeing a suit in the plaintiff's favour the first Court directed the defendants to pay the plaintiffs' costs, but following the direction in s. 206 of the Civil Procedure Code (Act XIV of 1882), set out at the end of the ordering portion of the decree the amounts of costs respectively incurred by the several defendants; and on the defendants' appeal to the High Court, the decree was reversed and the plaintiff was directed to pay to the "defendants-appellants the costs of the appeal" and "the costs incurred by them in the lower Court." *Held*, on a construction of the High Court's decree, that the defendants were entitled to recover in addition to the costs of the appeal the several amounts entered against their names in the decree of the first Court as their costs. RAGHU NANDAN LALL *v.* RAJENDRA PROSAD NARAIN SINGH (1909) 14 C. W. N. 556

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd.*

——— s. 206—*concld.*

——— ss. 206, 209.

See DECREE . I. L. R. 32 All. 295

——— ss. 215A, 216—*Principal and Agent—Suit for rendition of accounts and payment of sum found due to principal—Defence that per contra money was due to Agent—Court competent to grant a decree to Agent.* In a suit brought by the principals against an agent for rendition of accounts the agent expressed himself ready and willing to render accounts, but alleged that on such accounts being taken money would be found to be due to him, he did not, however, specifically pray for a decree for the sum alleged to be due to him. The Court granted a decree to the agent upon the finding that money was in fact due to him *Held*, that the decree was justified with reference to the provisions of ss. 215A and 216 of the Code of Civil Procedure, 1882. PARMANAND *v* JAGAT NARAIN (1910) . . . . I. L. R 32 All. 525

——— s. 230—*Execution of decree—Limitation—Abatement of appeal—Terminus a quo. Held*, that an order declaring an appeal to have abated is in effect an affirmation of the decree of the Court below, and limitation only begins to run against the decree-holder from the date of such order and not from the date of the decree under appeal. *Mahomed Mehdi Bella* v. *Mohini Kanta, I. L R 31 Calc 874*, followed. *Kewal* v *Tikha, 3 All L J. 8, Rup Singh* v. *Mukhraj Singh, I L R. 7 All. 887*, and *Akshoy Kumar Mondi* v. *Chunder Mohun Chathati, I. L. R 16 Calc. 250*, referred to. *Fazal Husain* v. *Eaj Bahadur, I L. R 20 All. 124*, doubted. MUHAMMAD RAZI *v.* KARBALAI BIBI (1909) . . . I. L. R. 32 All. 136

——— s. 232—*Transfer of portion of decree valid—Decree for maintenance, assignability of.* The transferee of a portion of a decree is a transferee of the decree within the meaning of s. 232 of the Code of Civil Procedure of 1882. The transfer of a decree for maintenance to the extent of the arrears, that had accrued due up to the date of transfer, is valid and may be recognised by the Court if the judgment-debtor will

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd.*

——— **s. 232**—*concld.*

not be prejudiced by such recognition ENDOORI VENKATARAMANIAH *v* VENKATACHAINULU (1909) **I. L. R 33 Mad. 80**

——— **s. 234**—*Hindu Law—Joint Hindu family—Decree obtained against uncle executed against nephews—Legal representative—Limitation Act (XV of 1877), Sch II, Art. 170—Application against persons not the legal representatives* A simple money decree was passed against one Raja Suchit Prasad Singh He died leaving a widow and two nephews. Application for execution was made against the two nephews, but was dismissed, upon the ground that the property sought to be taken in execution was ancestral A second application for execution was made against other property, alleged to be self-acquired, and this time against the widow as well as the nephews. *Held*, that the nephews were not legal representatives of the deceased judgment-debtor, and this being so, an application for execution against them could not be held to keep the decree alive as against the widow, with respect to whom it was otherwise barred by limitation. *Veerappa Chettiar* v. *Ramaswami Aiyar, I. L R. 27 Mad 106*, referred to. *Ramanuj Sewak Singh* v. *Hingu Lal, I L. R. 9 All. 517*, *Gopal* v. *Har Prasad, All. Week'y Notes (1892) 241*, and *Hari* v. *Narayan, I. L. R 12 Bom. 427*, distinguished. GYANENDRA NATH BASU *v.* RANI NIHALO BIBI (1910) **I. L. R. 32 All. 404**

——— **ss. 235, 238, 245.**

See LIMITATION ACT, 1877, SCH II, ART. 179 . . **14 C. W. N. 481**

——— **ss. 235, 320**—*Gujarat Talukdar's Act (Bom. Act VI of 1888), ss. 28, 29B and 29E—Decree against Talukdar—Execution—Decree transferred to Talukdari Settlement Officer—Notification of management—Submission by persons having claims—Application for the continuance of the execution proceedings against the legal representative of the deceased judgment-debtor—Certificate under s. 9E of the Gujarat Talukdar's Act (Bom. Act VI of 1888)—Managing Officer—Talukdari Settlement Officer.* When execution proceedings are commenced against a judgment-debtor, they can be continued after his death by substituting the name of the legal representative in place of that of the deceased judgment-debtor in the application for execution. It is not necessary to file a fresh application under the provisions of s 235 of the Civil Procedure Code (Act XIV of 1882). *Hirachand Harjivandas* v *Kasturchand Kasidas, I. L. R 18 Bom. 24*, explained. The effect of s. 29E of the Gujarat Talukdar's Act (Bom. Act VI of 1888) is that before the execution of a decree can be proceeded with, the Court must be satisfied that the decree-claim has been duly submitted. If the officer certifies that it has been duly submitted there is an end of the matter. If he does not so certify, the Court must wait for one month from the date of the receipt by the officer of an application for a certificate, and upon being satisfied that the claim has been duly submitted in accordance with the provisions of s. 29B of the Gujarat Talukdar's Act (Bom. Act VI of 1888) it may then proceed with the execution. The expression 'managing officer' in s 29E of the Act is merely a compendious term for "the Talukdari Settlement Officer or any other officer appointed by Government to take charge of the Talukdar's estate and keep the same in his management" referred to in s. 28 of the Act, and where the officer who takes charges of the estate and keeps the same in his management is the Talukdari Settlement Officer, the 'managing officer' is merely a synonym for 'Talukdari Settlement Officer' Where an application relating to a claim is presented to the Subordinate Judge and is forwarded by him to the Talukdari Settlement Officer, it amounts to a submission of the claim in writing within the meaning of s 29B of the Act, if the Talukdari Settlement Officer is also the managing officer. PURUSHOTTAM *v* RAJBAI (1909) **I. L R. 34 Bom. 142**

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd.*

——— **ss. 235, 320**—*concld.*

1. ——— **s. 244—Execution of decree**—*Interpretation. Held*, that s. 244 of the Code of Civil Procedure, 1882, does not apply to a dispute between the decree-holder and a person against whom, though a party to the suit, no decree has been passed. *Kalka Prasad* v *Basant Ram, I. L. R. 23 All. 346.* SHEO PARGASH SINGH *v.* NAWAB SINGH (1910) . . . **I. L R. 32 All. 321**

2. ——— **Compromise**—*Sale, application to set aside, on ground of fraud—Compromise purporting to be made by the applicants—Right of one of the applicants to show that he was no party to compromise.* The judgment-debtors under a decree applied under s. 244 of the Code of Civil Procedure (Act XIV of 1882) to set aside a sale of their property in execution of the decree The proceeding terminated in a compromise made on an application which purported to be signed by all the judgment-debtors. One of the judgment-debtors subsequently applied under s 244 of the Code of Civil Procedure (Act XIV of 1882) to show that she was no party to the petition and was not bound by the compromise: *Held*, that there was no bar in law to the hearing of such an application. *Rajib Panda* v. *Lakhan Sendh, I L R. 27 Calc. 11*, referred to. ASABAN BANU *v.* ANANDA CHARAN DUTTA (1909) **14 C. W. N. 823**

3. ——— **Decrée, revivor of**—*Civil Procedure Code (Act XIV of 1882), ss. 254, 258—Limitation Act (XV of 1877), Sch. II, Art. 180—Step in aid of execution—Order in Council, if includes provisions of decree affirmed—Limitation—Payments in satisfaction of decree made out of Court, if may be proved.* In order that any proceeding

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd.*

——— s. 244—*contd.*

in execution may operate as a revivor there must be expressly or by implication a determination that the decree is still capable of execution and the decree-holder is entitled to enforce it Where a decree-holder applied for execution and on the judgment-debtor's objecting to the execution on the ground of the decree being time-barred, their objection was overruled but the decree-holder did not proceed with the application any further. *Held*, that this order operated as a revivor of the decree SRIMATI KAMINI DEBI *v* AGHORE NATH MUKERJI (909) . . **14 C. W. N. 357**

——— **ss. 244, 252, 647—Parties**—*Execution—Death of judgment-debtor—Legal representatives of the judgment-debtor brought on record—Dispute as to property—Legal representatives should put forward their claim under s. 244—They cannot raise the defence in a separate suit for possession by auction-purchaser—Auction-purchaser not a stranger.* *C* sued *M* on a money-bond. *M* having died during the pendency of the suit, his widow *R* and his brother *N* were brought by *C* on the record as his representatives. A decree was passed awarding the claim out of the property of the deceased. After the passing of the decree but before it could be executed both *R* and *N* died *C* then brought on the record the defendants as the legal representatives of *M*. The latter denied that they were *M's* legal representatives or that they had any property of *M's* which could be liable for the decree. The Court overruled the objections, and in execution of the decree attached and sold the property in dispute. The plaintiff purchased the property at the sale, and filed this suit to recover possession thereof from the defendants The lower Court disallowed the plaintiff's claim on the ground that the property having been joint property of *M* and defendants', survived to the latter at *M's* death; and that the plaintiff obtained no title at the Court-sale which he could legally assert as against the defendants. In the lower appellate Court the plaintiff contended unsuccessfully that the defendants were debarred by the provisions of s 244 of the Code of Civil Procedure, 1882, from asserting their title. *Held*, that as the property was sold by the Court at *C's* instance as that of *M*, the question so far was one relating to the execution of the decree arising between the decree-holder and the defendants as judgment-debtors under s. 252 of the Civil Procedure Code of 1882. It was, therefore, a question in relation to them falling within s. 244 of the Code by reason of the explanation to s. 647 that applications for the execution of the decree were proceedings in suits. The defendants were consequently bound to object to the attachment and sale under that section, so far as the decree-holder's action was concerned. It was contended that whatever might have been the result if the decree-holder had been a party to the suit, the present dispute was between the auction-purchaser, who was a stranger to the previous suit and the execution proceedings therein, and the defendants, and that s. 244 did not apply: *Held*, that though an auction-purchaser at a Court-sale in execution of a decree was not a party to the suit in which the decree was passed and though he was not a representative of either the decree-holder or the judgment-debtor for the purposes of s 244, yet if the question raised by the judgment-debtor as to the legality of the Court-sale was virtually one between the parties to the suit, that is, between the decree-holder and the judgment-debtor, and if in the decision and result of that question the auction-purchaser was interested, the judgment-debtor ought not to be allowed to attack the sale in a suit The test in all such cases is whether the ground upon which the Court-sale is attacked as conferring no title upon the auction-purchaser affects the parties to the suit and could have as between them been raised and determined under s. 244 and whether the auction-purchaser, though not a party to that suit, is a party interested in the result. GOKULSING BHIKARAM *v* KISANSINGH (1910) . . . **I. L. R. 34 Bom. 546**

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd.*

——— **ss. 244, 252, 267**—*concld.*

——— **ss. 244, 283**—*Property attached in execution of a decree purchased while under attachment—Decree set aside—Purchaser not the representative of the judgment-debtor.* Where a decree is set aside in appeal everything done in pursuance of that decree comes to an end Hence where property which was subject to an attachment was purchased, but the decree under which the attachment was levied was set aside, it was *held* that the purchaser was not the representative of the judgment-debtor within the meaning of s. 244 of the Code of Civil Procedure, 1882. GHAFUR-UD-DIN *v* HAMID HUSAIN (1909) . . . **I. L. R. 32 All. 129**

——— s. **252**—*Decree against assets of deceased in the hands of representative is a decree against representative—Such decree executable only against such representative or his representative.* In a suit brought against *A*, the widow of a deceased person as his representative, a decree was passed directing the recovery of the sum sued for from the estate of the defendant's deceased husband in her hands. Another person *B* brought a suit against *A* to establish his title to the property of the deceased and having obtained a decree in his favour took possession of the estate The decree-holder sought to execute the decree against *B* under s. 252 of the Code of Civil Procedure:—*Held*, that the decree was not against the estate but against *A*, the legal representative and was capable of execution only against *A* and her representatives, *Subbanna* v. *Venkatakrishnan*, *I. L. R. 11 Mad. 408*, followed. KALIAPPAN SERVAIKARAN *v.* VARADARAJULU (1909) . . **I. L. R. 33 Mad. 75**

——— s. **257**—*Death of decree-holder, if relieves judgment-debtor of duty of payment—Mode*

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd.*

——— s. 257—*concld.*

of payment—Delay in payment of instalment—Interest. The death of the decree-holder does not relieve the judgment-debtor of the duty of paying up the decretal debt in one of the several modes specified in s. 257 of the Civil Procedure Code (Act XIV of 1882) He should either deposit the amount in Court as directed in cl. (*a*) or should take directions from the Court under cl. (*c*) Where the judgment-debtor upon the death of the decree-holder failed to deposit the balance due under an instalment decree till long after the date fixed for the payment of the instalment: *Held*, that the judgment-debtor was liable to pay interest for the period during which the instalment remained unpaid NARENDRA CHANDRA LAHIRI *v* CHARU CHANDRA SINGH (1908) . **14 C. W. N. 146**

——— ss. 257A, 258.

See LIMITATION ACT (XV OF 1877), SCH. II, ART. 179 (4) **I. L. R. 32 All. 257**

1. ——— s. 258. Payments made out of Court in satisfaction of a decree and not certified to the Court under s. 258, Civil Procedure Code, cannot be proved under s 244, Civil Procedure Code. KAMINI DEBI *v* AGHORE NATH MUKERJI (1909) . . . . . **14 C. W. N. 357**

2. ——— Adjustment or payment of decree—*Adjustment not certified to the Court—Decree-holder acting upon the adjustment and receiving money—Application to execute the decree—Estoppel by conduct—Indian Evidence Act (I of 1872), s. 115.* A decree was adjusted outside the Court. No notice was given to the Court of the adjustment, and its sanction was not taken under s. 258 of the Civil Procedure Code of 1882. The decree-holder received payments under the adjustment and after some time applied to execute the decree irrespective of the adjustment. The judgment-debtor pleaded the adjustment as a bar to execution The decree-holder contended that the adjustment not having been certified to the Court, it could not recognise it as valid but was bound to execute the decree. The Subordinate Judge overruled the contention holding that as the decree-holder had, after the adjustment, received for several years moneys under it, he was estopped by conduct under s. 115 of the Indian Evidence Act, 1872. *Held*, that the view of the Subordinate Judge gave the go-by to the plain language of the last paragraph of s 258 of the Civil Procedure Code, 1882. There is no room left by the law for the operation of the law of estoppel in the matter of execution. The last paragraph of s. 258 enacts a special law for a special purpose whereas s. 115 of the Indian Evidence Act, 1872, relates to the general law of estoppel; and the principle is that a special law overrides for its purposes the general law. *Per* CHANDAVARKAR, *J.*—Fraudulent executions of decrees must be discouraged by the Courts whenever they come to their notice; and decree-holders who enter freely into adjustments outside the Court and do not certify them as required by law, but fraudulently apply for execution, ignoring the adjustment, should be dealt with under the criminal law. *Per Heaton, J*—The purpose of s 258 of the Civil Procedure Code, 1882, is that the Court shall have complete knowledge of all that is done towards the satisfaction of its decree TRIMBAK RAMKRISHNA *v* HARI LAXMAN (1910) **I. L. R. 34 Bom. 575**

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd.*

——— s. 258—*concld.*

——— s. 276

See MORTGAGE . **I. L. R. 33 Mad. 429**

——— s. 278 When a claim under s. 278, Civil Procedure Code, is dismissed without adjudication it is not obligatory on the claimant to bring a regular suit *Sardhari Lal* v. *Ambika Pershad, L R. 15 I. A. 103*: *s.c. I L. R. 15 Calc. 521*; *Kunj Behari* v. *Kandh Prashad, 6 C. L J 252*, referred to But if such suit is brought, the claimant is bound by its result and cannot be heard to say that the suit was unnecessary SANKER NATH PANDIT *v.* MADAN MOHAN DAS (1909) . **14 C. W. N. 298**

——— ss. 285, 295—"*Claim or objection*" *entertainable under s. 285, nature of—Application for rateable distribution, if within.* An application for rateable distribution of proceeds of property realised in execution cannot be deemed to be an application for determination of any "claim to the attached property or of any objection to attachment thereof," within the meaning of s 285 of the Civil Procedure Code (Act XIV of 1882) These words refer to claims and objection of the sort which can be summarily inquired into and decided in execution proceedings as provided in the immediately preceding section or elsewhere in the Code as in ss. 278 to 281. An application purporting to be made under s. 295, which fails by reason of not satisfying the conditions laid down therein, ought not to be dealt with as one under s. 285 *Chokalingum* v. *Muthia Chetty*, (*1895*) *Lower Burma Judgments, 1893—1900* (*161*), approved. *Clark* v. *Alexander, I L R 21 Calc 200; Har Bhagat* v *Anandaram, 2 C. W. N. 126*, considered. RAMJAS AGARWALA *v.* GURU CHARAN SEN (1909) . . . **14 C. W. N. 396**

——— s 291.

See MORTGAGE. **I. L. R. 37 Calc. 897**

——— s. 295—*Rateable distribution under several decrees "Same judgment-debtor"—Decree against judgment-debtor—Subsequent decree against his legal representatives to be satisfied out of his estate* *A* obtained a decree against one Maruthamuthu Pillai; subsequently, *B* obtained a decree against the legal representatives of Maruthamuthu Pillai and his estate in their hands. *B* applied under s. 295, Civil Procedure Code, to share rateably in the proceeds of property

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd.*

——— **s. 295**—*concld.*

sold in execution of *A's* decree.—*Held*, that *B* was not entitled to do so. *Govind Abaji Jakhadi* v *Mahoniraj Vinayak Jakhadi*, *I L R. 25 Bom 404*, followed. When a decree is obtained against the legal representatives of a deceased person, they are the judgment-debtors *Kaliappan Servaikaran* v. *Varadarajulu*, *19 Mad. L. J. 651*, referred to. SRINIVASA AIYANGER *v.* KANTHIMATHI AMMAL (1910) . . **I. L. R. 33 Mad. 465**

——— **s. 308.**

See CIVIL PROCEDURE CODE, 1908, O XXI, R. 89. . . **I. L. R. 32 All. 380**

——— **s. 311**—*Application to set aside sale—Dismissal for default—Appeal—Adjournment—Illness* An order dismissing an application under s 311, Civil Procedure Code, on the ground of the non-appearance of the applicant, is appealable Where the parties were ready with their witnesses but the case was adjourned for want of time, and on the date fixed for hearing, the applicant wanted time on the ground of illness supported by a medical certificate from a Civil Hospital Assistant, but the Court refused the application: *Held*, that in the circumstances of the case the order was bad, and the case was remanded. BROJA SUNDAR ROY CHOWDHURY *v.* MOTI LAL MOZUMDAR (1910) **14 C. W. N. 573**

——— **ss. 313, 315.**

See SALE IN EXECUTION OF DECREE. **I. L. R. 37 Calc. 67**

——— **s 335.** The only order under s 335, Civil Procedure Code (Act XIV of 1882), upon which the character of finality is impressed is an order upon enquiry, and by parity of reasoning, the same effect can attach to an order under s 332 only when an investigation has been made. *Kunj Behari* v *Kandh Prashad*, *6 C. L J 362*, relied upon. GOURI CHARAN PATNI *v* SITA PATNI (1909) **14 C. W. N. 346**

——— **s. 351**—*Application to be adjudged insolvent by person against whom certificates issued under the Public Demands Recovery Act (I of 1895)—District Judge if may entertain application—Refusal—Appeal—Revision.* The District Judge has jurisdiction to entertain an application under Ch. XX of the Civil Procedure Code to be adjudged an insolvent notwithstanding that the debts, in respect of which relief is sought, have been certified and in part recovered against him under the provisions of the Public Demands Recovery Act. There is no appeal from an order refusing to entertain such an application. But such an order may be set aside by the High Court in exercise of its revisional powers KEDAR BANS LAL MISSER *v.* MAHARANI JANKI KOER (1909) **14 C. W. N. 14**

——— **ss. 366, 371 and Act V of 1908, order XXII, rules 2, 9**—*Judgment passed after death of party not absolute nullity—Such judgment not liable to collateral attack but must be set aside only by proper proceedings and unless so set aside bars a fresh suit.* A decree was passed in favour of a deceased plaintiff on the day of his death which occurred before the case was taken up for disposal and heard. In a suit brought by the representative of the plaintiff on the same cause of action and for the same relief, it was urged that the decree so passed was a nullity and that the subsequent suit was maintainable:—*Held*, that the suit was barred. It is only when the representative of a deceased plaintiff fails to apply within the time allowed by law that a suit abates under order XXII, rule 2 of Act V of 1908 or that the Court could have passed an order under s. 366 of Act XIV of 1882 that the suit shall abate. A decree passed after death is not therefore an absolute nullity The intention of the Legislature in enacting s. 371 of Act XIV of 1882 and order XXII, rule 9 of Act V of 1908 is clearly that where a suit has abated, no fresh suit shall be brought on the same cause of action, and that any remedy which the representative of a deceased plaintiff may have is by application to the Court in which the suit was pending. GOODA COOPOORAMIER *v.* SOONDARAMMALL (1909) **I. L. R. 33 Mad. 167**

——— **s. 368**—*Abatement of appeal—Death of a respondent pending appeal—Representative not brought on record—Decree against all—Cause of action not surviving in favour of other respondents—Pre-emption* One of the defendants respondents in a suit for pre-emption died pending appeal. No application was made within limitation to bring his representatives on to the record, but the appeal was decreed as against all the respondents. *Held*, that the suit being one in which the cause of action did not survive against the other respondents, the decree must be set aside as a whole *Raj Chunder Sen* v *Ganga Das Seal*, *I L R 31 Calc 487*, referred to. *Imdad Ali* v. *Jagan Lal*, *I L R. 17 All. 478*, distinguished. IMAM-UD-DIN *v.* SADARATH RAI (1910) **I. L. R. 32 All. 301**

——— **s. 372.**

See EXECUTION PROCEEDINGS. **14 C. W. N. 752**

——— **s. 375.**

See COMPROMISE, MEANING OF. **I. L. R. 34 Bom. 502**
14 C. W. N. 451

See DEKKHAN AGRICULTURISTS' RELIEF ACT, s 12 . **I. L. R. 34 Bom. 502**

See PLEADER'S AUTHORITY TO COMPROMISE . . **I. L. R. 34 Bom. 502**

1. ——— *Dekkhan Agriculturists' Relief Act (XVII of 1879), s. 12—Compromise of the case—Court's duty to record the compromise and pass decree in its terms—Pleader's compro-*

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd.*

——— s. 375—*contd.*

mising without authority from his client—Client to apply to cancel the compromise There is nothing in the provisions of s. 12 or in any other section of the Dekkhan Agriculturists' Relief Act, 1879, which expressly deprives the parties to a suit of the power of entering into a compromise and having that compromise recorded under s 375 of the Civil Procedure Code of 1882 which is the same as order XXIII, rule 3 of the Code of 1908. A compromise means the settlement of a disputed claim. Where a party complains that a compromise effected in his name by his pleader was unauthorised, he must move the Court to cancel all that has been done and to revive the suit *Basangowda* v. *Churchigirigowda, I. L. R. 34 Bom. 408*, followed. PIRAJI *v.* GANAPATI (1910) **I. L. R. 34 Bom. 502**

2. ——— "*Relates to the suit," construction of—Res judicata—Wrong decision on question of law, no bar to subsequent decision—Registration Act, ss. 3, 17—Provisions of Act do not relate to judicial proceedings—Provisos, effect of—Transfer of Property Act, ss 107, 108 (b)—Possession of right to recover rent, how given* The words "relates to the suit" in s. 375 of the Code of Civil Procedure mean "relates to the matter of the claim in the case" and there is nothing in the section to restrict the relief granted in the compromise to what is prayed in the plaint or less. Where the parties to a suit litigate as lessor and lessee for the ownership and possession of land, it is open to the parties to provide by compromise in what manner such land should be owned and enjoyed and such provision, although different from and even inconsistent with the plaint, "relate to the suit" within the meaning of s. 375 of the Code. *Venkatappa Nayanim* v *Thimmappa Nayanim, I. L. R. 18 Mad. 410*, not followed. *Muthu Vijaya Raghunatha Udayana Thevar* v. *Thandavaraya Tambiran, I. L. R. 22 Mad. 214*, not followed. *Joti Kuruvetappa* v. *Izari Sirusappa, I. L. R. 30 Mad. 478*, followed. An order or decree based on a mistake of law does not operate as *res judicata* in a subsequent proceeding in which the operation of such decree or order is not called in question. *Mangalathammal* v *Narayanaswami Aiyar, I L. R. 30 Mad. 461*, referred to. The provisions of the Registration Act do not apply to proper judicial proceedings whether consisting of pleadings filed by the parties or orders made by the Court. A compromise petition is a pleading filed by parties and can be sued on although not registered. *Bindeseri Nack* v. *Ganga Surani Sahu, I. L. R. 20 All. 171*, followed. Cases which are clearly outside the scope of an enactment cannot be brought within it by any inference drawn from the terms of a proviso Decrees and orders generally are outside the scope of sub-s. 1 of s. 3 of the Registration Act. Decrees and orders relating to leases, which are governed by cl (*d*) of sub-s. (1) to s. 17 cannot be brought within sub-s. (1) of s. 3 merely because sub-s 2 of s. 17, which is in the nature of a proviso, expressly exempts certain orders and decrees relating only to cls (*b*) and (*c*) of sub-s (1) to s. 17 of the Act. When the subject-matter of a lease is the rents and profits of land, the possession which a lessor, under s. 108 (*b*) of the Transfer of Property Act, is bound to give the lessee, is sufficiently given by giving notice of the lease to the ryots or other persons in occupation and requiring them to attorn and pay rent to the lessee. Attornment by the tenants and actual receipt of rent is not necessary to give the transferee possession of the rent Such notice will amount to delivery of possession, only where the transferor himself has possession to give and not where he is himself out of possession. NATESA CHETTI *v.* VENGU NACHIAR (1909) **I. L. R. 33 Mad. 102.**

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd.*

——— s. 375—*concld.*

——— s. 396—*Partition—Preliminary decree in plaintiff's favour—Resistance to commissioner—Refusal of plaintiff's application for re-issue of commission.* A preliminary decree for partition of a house having been made, the Court appointed a commissioner to view the house and prepare a scheme for partition. In this he was resisted by the husband of the plaintiff and was unable to execute the commission. The plaintiff applied for the issue of a fresh commission, but the Court refused this and dismissed the suit altogether. *Held*, that the Court had no authority to nullify its decree by totally dismissing the suit, but ought to have acceded to the request of the plaintiff to re-issue the commission and to have seen that its order was obeyed. MASUM-UN-NISSA *v.* LATIFAN (1910) . . **I. L. R. 32 All. 319**

——— ss 443, 456.

See MINOR . . **I. L. R. 32 All. 287**

——— ss. 470—474, 578.

See INTERPLEADER.
I. L. R. 37 Calc. 552

——— s 506.

See ARBITRATION . **I. L. R. 37 Calc. 63**

——— s. 551.

See JURISDICTION **I. L. R. 34 Bom. 267**

——— s. 564.

See REMAND . **I. L. R. 37 Calc. 11**

——— s. 583—*Decree reversed on appeal—Restitution—Mesne profits—Jurisdiction of Court to which application for restitution is made.* It is the legal effect of a decree of reversal that the party against whom the decree was given is to have restitution of all that he has been deprived of under it. A Court of Appeal does not necessarily enter

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*concld.*

——— s. 583—*concld.*

into the question whether a decree, it is about to reverse, has been executed or not. *Hurro Chander Roy Chowdhry* v. *Shoorodhonee Debia*, *9 W. R. 402*, *Dorasami Ayyar* v. *Annasami Ayyar*, *I. L. R 23 Mad., 306*, and *Collector of Meerut* v. *Kalka Prasad*, *I. L. R. 26 All. 665*, referred to. *Kalka Singh* v. *Paras Ram*, *I. L. R. 22 Calc. 434*, distinguished. A mortgagor obtained a decree for redemption and in execution thereof recovered possession of the mortgaged property. On appeal, however, the High Court enhanced the sum payable by the plaintiff mortgagor and on his failure to pay, the suit was dismissed. The mortgagee thereupon applied to the Court of first instance asking to be restored to possession of the mortgaged property and also for mesne profits for the period during which he was out of possession *Held*, that the Subordinate Judge had jurisdiction, not only to make restitution by restoring possession, but also to award mesne profits, although the decree of the High Court did not specifically provide for mesne profits. PARBHU DAYAL *v.* ALI AHMAD (1909) . . . . **I. L. R. 32 All. 79**

——— s. 622—*Religious Endowments Act, XX of 1863, s. 18—District Judge may, in disposing of petitions under s. 18, make inquiries.* An order of a District Judge under s. 18 of Act XX of 1863 is not open to revision under s. 622 of Act XIV of 1882, unless he acts illegally in the exercise of his jurisdiction. *In re Venkataswara*, *I. L. R. 10 Mad. 98*, referred to. A District Judge acting under s. 18 of Act XX of 1863 has power to make enquiries before disposing of the application for leave to sue and is not bound to decide on a bare perusal of the application. RAMANATHAN CHETTIAR *v.* ANANTHANARAYANA AIYAR (1909) . . **I. L. R. 33 Mad. 412**

——— 635.

See PRACTICE . **I. L. R. 37 Calc. 853**

CIVIL PROCEDURE CODE (ACT V OF 1908).

——— ss. 2 (*17*), 80—*Public officer—Suit against public officer—Notice of claim necessary—Cantonment Committee is public officer—Cantonments Act (XIII of 1889), s. 80, applies to actions ex delicto and not to actions ex contractu.* A Cantonment Committee constituted under the Indian Cantonments Act (XIII of 1889) is a "public officer" within the meaning of s. 2, cl. (*17*) of the Code of Civil Procedure (Act V of 1908). Before the Committee can be sued, the notice prescribed by s. 80 of the Code must be given. The notice contemplated by s. 80, has to be given for actions sounding substantially in tort; and it makes no difference that those actions are, by operation of law, treated, for certain purposes, as actions *ex contractu*. *Rajmal* v. *Hanmant*, *I. L. R. 20 Bom. 697*, considered. CECIL GRAY *v.* THE CANTONMENT COMMITTEE OF POONA (1910) **I. L. R. 34 Bom. 583**

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— s. 9—*Suit for declaration and injunction—Right to perform Ram Lila, such performance not being connected with any shrine or temple and being supported by purely voluntary contributions—Suit not maintainable—Jurisdiction.* The plaintiff, a minor, sued for a declaration that he had the right to perform certain religious pageants in Benares and to receive subscriptions in connection therewith, and claimed an injunction to restrain the defendant from interfering with that right. It was found that these pageants had been performed for many years past by the plaintiff's father, grandfather and great-grandfather with the aid of voluntary subscriptions from the Hindu community. But the pageants were not connected with any particular temple, shrine or sacred spot, nor did the plaintiff or his ancestors hold any office by virtue of which they were under any obligation to perform such pageants. The performance thereof was in fact wholly voluntary. *Held*, that the plaintiff's suit would not lie *Tholappala Charlu* v *Venkata Charlu*, *I. L. R 19 Mad. 62*, *Srinivasa* v. *Tiruvengada*, *I. L. R. 11 Mad. 450*, and *Hur Lall* v. *Jeorakhan Lall*, (*1862*) *S. D A., N.-W. P. 314*, referred to. CHUNNU DATT VYAS *v.* BABU NANDAN (1910) . . . . **I. L. R. 32 All. 527**

——— s. 11.

See LIMITATION ACT, 1877, ss. 5, 7.
I. L. R. 34 Bom. 589

1. ——— *Res judicata—"Former suit"—Application of rule of res judicata unaffected by question in which Court an appeal lies.* The rule of *res judicata* so far as it relates to the retrial of an issue, refers not to the date of the commencement of the litigation but to the date when the Court is called upon to decide the issue. *Balkishan* v. *Kishan Lal*, *I L. R. 11 All. 148*, followed. *Held*, also, that it is the competency of the Court of first instance to entertain the two suits which regulates the application of the rule of *res judicata*: the fact that in the two suits appeals may lie in different Courts does not affect the application of the rule. BENI MADHO *v.* INDAR SAHAI (1909) . . **I. L. R. 32 All. 67**

2. ——— *Limitation Act (XV of 1877), ss 5 and 7—Application to file an appeal in formâ pauperis—Delay in making the application—Minor applicant—Excuse of delay—Probate—Grant of probate—Question of title not affected by the grant—Res judicata* A suit filed in *formâ pauperis* was decided on the 10th February 1908. An application for leave to appeal in *formâ pauperis* was presented to the High Court on the 13th April 1908; but as it was beyond time it was rejected. On an application to excuse the delay, it was excused on the ground that the applicant having been a minor, s. 7 of the Limitation Act, 1877, applied. At the hearing, it was objected that the application for permission to appeal in *formâ pauperis* must be treated as an appeal, and that s. 5, and not s. 7 of the Limitation

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **s. 11**—*concld.*

Act, applied to it. *Held*, overruling the contention, that whether the application was treated as falling under s. 5 or under s. 7 of the Limitation Act, 1877, the result was the same If it fell under s. 5, as an appeal, then under the second paragraph of that section, which applied to appeals, the Court had jurisdiction to excuse delay, after the period of limitation prescribed for the presentation of an appeal had expired If, on the other hand, it be treated as an application and fell under s. 7 of the Limitation Act, it was clearly within time and there was no need of excusing delay because the section provided that a minor could apply after he had attained the age of majority within a certain period The probate is conclusive only as to the appointment of executors and the validity and the contents of the will; and on the application for probate it is not the province of the Court to go into the question of title with reference to the property of which the will purports to dispose, or the validity of such disposition. CHINTAMAN VYANKATRAO *v* RAMCHANDRA VYANKATRAO (1910)

I. L. R. 34 Bom. 589

——— **s. 12.**

See BENGAL TENANCY ACT, s. 103B.

14 C. W. N. 364

——— **ss. 14, 151; o XLVII, r. 1**—*Review of judgment—Application for review in second appeal, based on alleged discovery of new and important evidence.* The High Court cannot in a second appeal entertain an application for a review of judgment based on the ground that since the disposal of the appeal, documentary evidence has been discovered which, if sufficiently proved, would have led the Court below to come to a different finding, although, had such evidence been discovered before the disposal of the appeal, the Court might have allowed the appellant to withdraw the appeal with a view to apply to the lower Appellate Court for a review of judgment on the ground of the discovery of fresh evidence. *Panchanan Mookerjee* v. *Radhanath Mookerjee, 4 B. L R. 213*, and *Raru Kutti* v. *Mamad, I. L. R 18 Mad. 480*, referred to and followed NAND KISHORE, *In the matter of the petition of*. (1909) . . **I. L. R. 32 All. 71**

——— **s. 24.**

See EXECUTION OF DECREE.

I. L. R. 37 Calc. 574

——— *Bombay Civil Courts Act (XIV of 1869), Part V—Suit cognizable and heard by the First Class Subordinate Judge—Application to the Court of the District Judge for transfer—Transfer of the application to the Assistant Judge—Order of the Assistant Judge for transfer of the suit to the District Court—Jurisdiction.* The plaintiff filed a suit in the Court of the First Class Subordinate Judge claiming R18,797. The suit was heard by that Judge for some days and then the defendant filed an application in the Court of the District

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **s. 24**—*concld.*

Judge for transfer of the suit to another Court. The District Judge transferred the application to the Assistant Judge for disposal. The Assistant Judge heard the application and ordered that the suit be transferred to the District Court for trial The plaintiff having objected that the order of the Assistant Judge was without jurisdiction: *Held*, setting aside the order, that under the provisions of the Bombay Civil Courts Act (XIV of 1869), Part V, the limit of the Assistant Judge's jurisdiction for the purpose of hearing suits is R10,000, and that in case of suits and applications when the value of the subject-matter does not exceed R5,000, an appeal in appealable cases lies to the District Judge The Assistant Judge is, therefore, not a Judge of co-ordinate jurisdiction to the District Judge. He is, therefore, not a Judge of the District Court and the order complained of was not made by the District Court which alone had jurisdiction S. 24 of the Civil Procedure Code (Act V of 1908) empowers the District Court to withdraw any suit *and* try and dispose of it The suit withdrawn being for a sum exceeding the jurisdiction of the Assistant Judge he could not try and dispose of it. He was, therefore, not a Judge of the District Court as contemplated by the section which must be a Court of unlimited pecuniary jurisdiction. HAJI UMAR ABDUL RAHIMAN *v.* GUSTADJI MUNCHERJI (1910)

I. L. R. 34 Bom. 411

——— **s. 33, o. XX, rr. 6 and 7**—*Administration suit—Finding on a substantial question of right between parties—Appointment of Receivers—Finding—Decree—Appeal* In an administration suit the first Court recorded a finding on a substantial question of right between the parties and appointed receivers. The plaintiff did not apply to have a formal decree drawn up. The plaintiff, however, appealed against the finding on the ground that it amounted to a decree. The Judge rejected the appeal holding that there was no decree which could be the subject of an appeal. On second appeal by the plaintiff:—*Held*, that the second appeal could not be entertained because there was in fact no formal decree from which an appeal could be preferred. BAI DIVALI *v.* SHAH VISHNAV MANORDAS (1909)

I. L. R. 34 Bom. 182

——— **ss. 36, 37.**

See POWER-OF-ATTORNEY.

I. L. R. 37 Calc. 399

——— **ss. 47, 96, 104 (*b*), 135 (*2*)**—*Execution of decree—Arrest—Privilege of exemption from arrest under civil process—Appeal.* Certain judgment-debtors, who had come from Bombay to Benares to look after an application which they had made for the rehearing of a case decided against them *ex parte*, were arrested under a warrant taken out by the decree-holder in execution of his decree,

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **ss. 47, 96, 104 (*b*), 135 (*2*)**—*contd.*

At the time of their arrest the judgment-debtors were seated in the train at the Benares railway station and had taken tickets for Allahabad. *Held*, that the judgment-debtors were not exempted from arrest under s. 135 of the Code of Civil Procedure, 1908, also that the order for their arrest was appealable as a decree under s. 96 of the Code. *In the matter of Siva Bux Savuntharam, I. L. R. 4 Mad. 317*, not approved. *Wooma Churn Dhole* v. *Teil, 14 B L. R. App 13*, referred to. ARDESHIRJI FRAMJI *v* KALYAN DAS (1909) **I. L. R. 32 All. 3**

——— **s. 48**—*Execution of decree—Decree for sale upon a mortgage passed before 1908—Retrospective effect of Statutes. Held*, that the right to enforce execution of a decree being a substantive right and not a mere matter of procedure, s. 48 of the Code of Civil Procedure, 1908, will not have the effect of barring execution of decrees which were passed prior to the enactment of the Code and were, having regard to the Code of Civil Procedure of 1882, and to the Indian Limitation Act, 1877, alive at the time of its coming into force. *Smith* v. *Callander, [1901] A. C. 297, Phillips* v. *Eyre, L. R. 6 Q. B. 1*, and *Roddam* v. *Morley, 1 DeG. & J. 1*, referred to. KAUNSILLA *v.* ISHRI SINGH (1910) . . **I. L. R. 32 All. 499**

——— **s. 53**—*Execution of decree—Effect of previous order in execution—Res judicata.* When the court executing a decree had decided that the decree as it stood was incapable of enforcement against the ancestral property of the original debtor, but could only be enforced against property in the hands of the judgment-debtors by way of inheritance and not by way of survivorship: *Held*, that this decision was *res judicata* between the parties to the decree and was not affected by the provisions of ss. 52 and 53 of the Code of Civil Procedure, 1908. COLLECTOR OF SHAHJAHANPUR *v.* KUNJ BEHARI LAL (1910) **I. L. R. 32 All. 210**

——— **ss. 92, 115.**

See PUBLIC CHARITIES. **14 C. W. N. 932**

——— **s. 99**—*Misjoinder includes non-joinder—What parties necessary in suit against karnavan of tarwad to enforce contract of previous karnavan—When act of karnavan impeachable* In a suit to enforce against the karnavan of a tarwad in his capacity as such karnavan a contract made by a previous karnavan on behalf of the tarwad, it is not necessary to add the other members of the tarwad as parties. 'Misjomder' in s. 99 of the Civil Procedure Code of 1908 includes 'non-joinder' A contract made by the karnavan of a tarwad, if prudent and fair at the time it was made, is binding on his successor in office. YAKKANATH EACHARAUNNI VALIA KAIMAL *v.* MANAKKAT VASUNI ELAYA KAIMAL (1909) . . **I. L. R. 33 Mad. 436**

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **s. 115.**

See CRIMINAL JURISDICTION. **14 C. W. N. 806**
I. L. R. 37 Calc. 714

See HIGH COURT, ORIGINAL SIDE, JURISDICTION OF . **I. L. R. 37 Calc. 714**

See JURISDICTION **I. L. R. 34 Bom. 267**

See SANCTION FOR PROSECUTION. **I. L. R. 37 Calc. 13**

——— *Order granting an application for leave to sue in formâ pauperis—Revision. Held*, that no application in revision will lie to the High Court from an order granting an application for leave to sue *in formâ pauperis. Harsaran Singh* v. *Muhammad Raza, I. L. R. 4 All. 91*, and *Bulneshri Dat* v *Bidriadis, All. Weekly Notes (1882) 69*, followed. *Faiz Musammat Muhammad Khan* v. *Aziz-un-nissa, All. Weekly Notes (1893) 218; Musammat Changia* v. *Joti Prasad, Civil Revision No. 24 of 1910, dated May 24th, 1910, Ghulam Shabbir* v. *Dwarka Prosad, I. L. R. 18 All. 163*, and *Debi Das* v. *Ejaz Husain, I. L. R. 28 All. 72*, referred to. MUHAMMAD AYAB *v.* MUHAMMAD MAHMUD **I. L. R. 32 All. 623**

——— **ss. 119, 129.**

See PRACTICE . **I. L. R. 37 Calc. 853**

——— **s. 128.**

See CONTRACT ACT, ss. 39, 73, 120. **I. L. R. 34 Bom. 192**

——— **s. 144.**

See EX PARTE DECREE. **14 C. W. N. 182**

——— **s. 148.**

See PRACTICE . **I. L. R. 37 Calc. 548**

——— **s. 151.**

See CASTE QUESTION, JURISDICTION OF CIVIL COURTS IN. **I. L. R. 34 Bom. 467**

See STAMP ACT, 1899, s. 52. **14 C. W. N. 1101**

See TRUSTS ACT . **I. L. R. 34 Bom. 467**

See TRUSTEES OF CASTE-FUNDS. **I. L. R. 34 Bom. 467**

1. ——— **Decree of Small Cause Court**—*Money lying in deposit in the Court of the First Class Subordinate Judge—Attachment and recovery of money in execution of the Small Cause Court decree—Suit in the Court of the First Class Subordinate Judge for a declaration that the attachment was invalid and for refund of money—Decree accordingly—Proceedings in the Small Cause Court and order for refund by that Court—Order not sustainable.* The plaintiff brought a suit in the Court of the First Class Subordinate Judge and finally obtained

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— s. 151—*concld.*

a decree declaring that an attachment on certain money, already lying in deposit in that Court, levied by the defendant in execution of his Small Cause Court decree was invalid and decreeing that the defendant should repay the same to the plaintiff. In execution of the said decree in the suit of the Court of the First Class Subordinate Judge, the plaintiff applied to the Small Cause for the refund of the money and that Court passed an order for the refund. The defendant, thereupon, preferred an application to the High Court under the extraordinary jurisdiction. *Held*, setting aside the order, that such an order could only be made if it was necessary for two purposes, namely, for the ends of justice or to prevent the abuse of the process of the Court. The plaintiff had already a decree which he was entitled to execute in the First Class Subordinate Judge's Court. GANESH NARAYAN *v.* PURUSHOTTAM GANGADHAR (1909) **I. L. R. 34 Bom. 135**

2. ——— **Caste questions**—*Trustees of caste funds—Extent of right to inspect documents—Demand and refusal—Jurisdiction of Civil Courts in caste questions—Application of Indian Trusts Act (II of 1882), ss 5 and 6, to creation of trusts to caste funds—Civil Procedure Code (Act V of 1908), s. 151. Held*, that when according to well-established principles certain questions have been removed from the jurisdiction of the Court, they cannot be brought within the jurisdiction under s. 151 of the Civil Procedure Code (Act V of 1908). JETHABHAI NARSEY *v.* CHAPSEY COOVERJI (1909) **I. L. R. 34 Bom. 467**

——— s. 152.

See PRACTICE . **I. L. R. 37 Calc. 649**

——— o. I, r. 3, o. II, r. 3—*Grades of several defendants in one suit—"Same act or transaction"—"Series of acts or transactions"—Practice.* In reading order I, rule 3, of the Civil Procedure Code (Act V of 1908) it seems quite obvious that the word "same" which precedes the words "acts or transaction" governs also the words "series of acts or transactions" and must be read before those words also. The first condition to be fulfilled before joining several persons as co-defendants in the same suit is that the right to relief sought in the suit must arise against all the defendants from the *same* act or transaction or from the *same* series of acts or transactions. The second condition to be fulfilled under the rule is that some common question either of fact or law should arise against the defendants if separate suits were brought against such persons. Before a plaintiff can join several defendants in the same suit *both* the conditions laid down in the rule must be fulfilled, *first*, the relief sought against the defendants whether jointly, severally or in the alternative must arise from the same act or transaction or the same series of acts or transactions. And, *secondly*, there must rise between the plaintiff and all the defendants some common question of law or fact. The plaintiff may in one action unite several causes of action against several defendants provided that all such defendants are "jointly liable in respect of each and all of such causes of action" and that the condition precedent to the plaintiff being allowed to join several causes of action against several defendants, is that such defendants must all "have a joint interest in the main question raised by the litigation" and that causes of action joined in one suit against several defendants must be causes of action in which "the defendants are all jointly interested." It is not necessary, that every defendant should be interested as to all the reliefs claimed in the suit but it is necessary that there must be a cause of action in which all the defendants are more or less interested although the relief asked against them may vary. UMABAI *v.* BHAU BALWANT (1908, . . **I. L. R. 34 Bom. 358**

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— o. I, r. 3—*concld.*

——— o. I, r. 8.

See ADMINISTRATION SUIT.
I. L. R. 34 Bom. 420

See PARTY TO A SUIT.
I. L. R. 34 Bom. 420

See PRACTICE . **I. L. R. 34 Bom. 420**

——— **Parties**—*Practice—Suit filed by plaintiff representing body of creditors—Application to be made party—Administration suit* Where a suit has been filed on behalf of a body of persons and an individual member of that body applies to be made a party, he must show that his interests will be seriously prejudiced if he is not allowed to come in. He must show that the conduct of the suit is not in proper hands, or that action prejudicial to his interest is being taken by those who purport to represent him. In an administration suit it is extremely undesirable that individual creditors should be added as parties unless they show some very strong reason. The willingness of the applicants to bear their own costs does not counterbalance the delay caused by the addition of a party and the consequent increase in the cost of other parties. VASSONJI TRICUMJI & Co *v.* ESMAILBHAI SHIVJI (1909) **I. L. R. 34 Bom. 420**

——— o. I, r. 8.

See LIMITATION ACT, 1877, ss. 22, 28.
I. L. R. 34 Bom. 91

——— o. II, r. 2 (2).

See CIVIL PROCEDURE CODE (1882), s. 43.
I. L. R. 32 All. 625

——— o. XI, r 14—**Discovery**—*High Court—Power to interfere with interlocutory order under the Charter Act (24 and 25 Vict., c. 104), s. 15—Order for discovery—Power of Court how to be exercised—Order before issues framed or written statement filed—*

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— o. XI, r. 14—*concld.*

Right of inspecting party to take copies and notes. Order for production of documents can be made under rule 14 of Order XI before the issues have been framed. The order must no doubt be limited to such documents alone as relate to matters in question in the suit and the Court must consequently, before it makes the order determine for the purpose thereof what are the matters in question in the suit, and this may well be done even before the issues have been framed. Provided this is done, an order for production of the defendant's documents may be made at the instance of the plaintiff even before the written statements have been filed *Union Bank of London* v *Manby, 13 Ch D. 239, Augustinus* v. *Nemicks, 16 Ch. D 13*, referred to. A party cannot obtain a commission for the inspection or production of books or papers in order that he may ransack them for evidence to make out his case. A party cannot ask for discovery with a view to ascertain the evidence on which his opponent's action or defence rests. But if the documents are material to the applicant's case, it is no objection to their production or inspection that they relate to the case of his adversary The Court is ordering production should by its order specify the time and place of inspection and give direction as to the manner of inspection. The Court cannot delegate the exercise of its power of requiring the production of any document under the rule to a Commissioner. The party who has obtained an order to inspect documents may take notes of their content. He has also the right to take copies, but on application to the Court. "There is no possible ground for controversy that if the High Court is satisfied that an interlocutory order of the description now before us has been made without jurisdiction or under such circumstances as are likely to cause irreparable injury to one of the litigants, the High Court has ample power to set matters right under s. 15 of the Charter Act" *Dhape* v. *Ram Pershad, I. L. R. 1 Calc. 687*, referred to GOBINDA MOHAN DAS *v.* KUNJA BEHARY DASS (1909) **14 C. W. N. 147**

——— o. XIX, r. 3.

See AFFIDAVIT **I. L. R. 37 Calc. 259 : 14 C. W. N. 153**

——— o. XXI, r. 24 (2).

See PENAL CODE (ACT XLV OF 1860) s. 186 . **I. L. R. 37 Calc. 122**

——— o. XXI, r. 89—*Civil Procedure Code (1882), s. 308—Execution of decree—Sale in execution—Forfeiture of auction-purchaser's deposit.* An auction-purchaser deposited in Court R1,000 out of a total sum of R2,200. Owing to the judgment-debtor making an application to have the sale set aside, the auction-purchaser did not deposit the remainder of the purchase money. The judgment-debtor's application was not accompanied, as it should have been, by court-fee stamps in payment of the expenses of the sale. *Held,* on application by the auction-purchaser for refund of the money deposited by him, that the Court would have exercised a proper discretion in allowing a refund as prayed, and it was allowed, subject to payment by the applicant of the expenses of the sale. MATHURA PRASAD PANDE *v.* GAURI SHANKAR DAS (1910) . . . **I. L. R. 32 All. 380**

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— o. XXI, r. 89—*concld.*

——— o. XXI, r. 91.

See BENGAL TENANCY ACT, s. 65. **14 C. W. N. 1096**

——— o XXXIII, rr. 1, 2 and 5—*Application to sue as pauper—Disqualification—Subject-matter of suit—Cause of action—Civil Procedure Code (Act V of 1908), order XXXIII, rules 1, 2 and 5.* A mortgagor applied for permission to institute a suit as a pauper for the setting aside of a sale of the mortgaged property by the mortgagee, with an alternative claim for damages. The mortgagee, admitting there was a surplus due to the applicant after the mortgage-debt had been satisfied paid R101 into Court, and contended that the applicant was not a pauper, and further that the applicant disclosed no cause of action. *Held,* that the applicant was a "pauper" within the meaning of the Explanation to order XXXIII, rule 1, of the Civil Procedure Code (Act V of 1908), but that the allegations contained in the application did not disclose a cause of action. *Dwarkanath* v. *Madhavrav, I. L. R. 10 Bom. 207*, not followed. FATMABAI *v.* DOSSABHOY RUSTOMJEE UMRIGAR (1909) . . . **I. L. R. 34 Bom. 638**

——— o. XXXIV.

See MORTGAGE . **I. L. R. 37 Calc. 907**

——— o. XXXIV, r. 14—*Usufructuary mortgage—Possession not given to mortgagee—Suit for, possession compromised, mortgagee taking a simple money decree—Sale of mortgaged property.* A usufructuary mortgagee who had not obtained possession of the mortgaged property brought a suit for possession. The suit was compromised and by consent a simple money decree was passed in favour of the mortgagee. *Held,* that, the decree being a decree passed on a compromise, the mortgagee was not precluded from bringing the mortgaged property to sale in execution thereof. *Madho Prasad Singh* v. *Baij Nath, All. Weekly Notes (1905) 152, Hem Ban* v. *Bihari Gir, I. L. R. 28 All. 58*, and *Narsingh Das* v. *Munna, 6 A. L. J. 731*, distinguished. *Rai Kashi Pershad Singh* v. *Babu Duleep Narain Sahu, 8 C. W. N. 264*, followed. GANESH SINGH *v.* DEBI SINGH (1910) **I. L. R. 32 All. 377**

——— o. XXXVIII, rr. 5, 6.

See DIVORCE . **I. L. R. 37 Calc. 613**

1. ——— o. XL, r. 1—Receiver, appointment of—*Court's discretion—Partition suit*

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **o. XL, r. 1**—*contd*

—*Exclusion of co-owner if ground for appointment, when no waste established—Change of law.* Under o. XL, r. 1 of the Civil Procedure Code, the Court has been given precisely the same discretion in questions of appointment of a receiver that the Courts in England have. The condition in the old Code that to justify such appointment in any case it should be found necessary to preserve property from waste and alienation having been removed there has been a substantial widening of the Court's discretion. Where therefore in a suit for partition of joint-family property it was proved that a co-owner admittedly entitled to a half share in a considerable portion of the properties in suit was being kept out of possession by the co-owner, with the result that all supplies were cut off from his branch of the family: *Held*, that although no case of waste might have been established against the co-owner in possession the case was eminently a proper one for the appointment of a receiver. *Paresh Nath Mookerjee* v. *Omerto Nauth Mitter*, *I. L. R. 17 Calc. 614*, *Chandi Dat Jha* v *Padmanand Singh*, *I. L. R. 22 Calc 459*, not followed *Porter* v. *Lopes*, *7 Ch. D. 358*, relied on RAMJI RAM *v* SALIGRAM (1909) . . **14 C. W. N. 248**

2. ——— *Receiver, appointment of—Judicial discretion of Court—"Just and convenient" what is—Defendant in possession not to be disturbed except on strong grounds—Waste—Delay in instituting a suit, effect of, on receivership application by plaintiff.* The words "just and convenient" in o. XL, r 1, are derived from the English Judicature Act which greatly enlarged the powers which the Court of Chancery formerly exercised, and the Courts in India have the fullest jurisdiction to appoint as well as to remove a Receiver in the exercise of a sound judicial discretion. A Receiver should not be appointed in supersession of a *bonâ fide* possessor of the property in controversy unless there is some substantial ground for interference. *Sidheswari Debi* v *Abhoyeswari Debi*, *I. L. R. 15 Calc 818*, followed *Mohunt Sisaram Das* v. *Mohunt Mohabir Das*, *5 C. W N 362*, *Sham Chand Giri* v. *Bhaya Ram Pandey*, *5 C. W. N 365*, referred to. *Held*, on the facts, that the charge of waste against the defendant in possession had not been established and that plaintiff's delay in instituting the suit was such as to disentitle him to relief by appointment of a Receiver. MATHURIA DEBYA *v* SHIBDAYAL SINGH HAJARI (1909) **14 C. W. N. 252**

——— **o. XLIII, r. 1.**

See RECEIVER . . **14 C. W. N. 183**

——— **o. XLV, r. 7.**

See PRIVY COUNCIL . **14 C. W. N. 420**

——— "Date of decree" in o. 45, rule 7, Civil Procedure Code, means the date on which the decree is pronounced and not that on which it is signed. *The Owners of the Ship "Brenhilda"* v. *The British India Steam Navigation Co.*, *I. L. R. 7 Calc. 517*, followed. HARENDRA LAL ROY CHOUDHRY *v.* HARI DASI DEBI (1909) **14 C. W. N. 420**

CIVIL PROCEDURE CODE (ACT V OF 1908)—*concld.*

——— **s. 152**—*concld.*

——— **Sch. II, s. 1**—*Award—Reference by parties interested—Defendant who did not appear not joining—Validity of reference.* A suit was brought against several persons, one of whom was a minor An official of the court was appointed guardian *ad litem* for the minor defendant, but he did not put in an appearance. The parties, with the exception of the minor, applied to the Court to refer the matters in dispute to arbitration. The reference was made and an award was given by arbitrators, whereby the minor was exempted from the plaintiff's claim. Objections were taken to the award, but they were overruled and a decree passed in accordance with the award. *Held*, that the minor, not having put in an appearance nor contested the suit, was not a person interested in the matters which were referred to arbitration, within the meaning of s. 1, sch. II, of the Code of Civil Procedure, and his not joining in the reference did not invalidate it. *Ptam Mal* v. *Sadiq Ali Khan*, *I. L. R. 24 All. 229*, applied. ISHAR DAS v. KESHAB DEO (1910) . **I. L. R. 32 All. 657**

——— **Sch. II and s. 92**—*Mahomedan law—Waqf—Public charitable trust—Dispute as to right to succeed as mutawalli—Arbitration.* A trust for charitable purposes being a trust of a public character, the right to succeed to the trusteeship of such a trust is not a right which can be settled by arbitration: a Court therefore has no jurisdiction to entertain an application to file an award in such a matter under s. 20 of the second schedule to the Code of Civil Procedure, 1908. *Mahadeo Prasad* v. *Bindeshri Prasad*, *I. L. R. 30 All 137*, referred to. MUHAMMAD IBRAHIM KHAN *v.* AHMAD SAID KHAN (1910) **I. L. R. 32 All. 503**

COCAINE.

See BOMBAY ABKARI ACT, SS. 43 (*b*), 47. **I. L. R. 34 Bom. 342**

CO-EXECUTANT.

See ATTESTING WITNESS. **14 C. W. N. 1046**

COGNIZANCE OF OFFENCE.

See JURISDICTION OF MAGISTRATE. **I. L. R. 37 Calc. 221**

COLLECTOR, SALE BY.

See CERTIFICATE OF SALE. **I. L. R. 37 Calc. 107**

COMMISSION (SECRET).

See PRINCIPAL AND AGENT. **I. L. R. 37 Calc. 81**

COMMITMENT.

See JURY, RIGHT OF TRIAL BY.
I. L. R. 37 Calc. 467

COMPANIES ACT (VI OF 1882).

——— s. 76—Articles of association— *Alteration of memorandum of association by articles—To what extent a company can by resolution alter articles.* Under s. 76 of the Indian Companies Act anything which appears in the articles of association but is not provided for in the memorandum of association may be altered by a special resolution Where the articles of association provide for matters which need not, under s. 8 of the Companies Act, be contained in the memorandum of association and which are not either expressly or impliedly dealt with by such memorandum, the portions of the articles dealing with such matters cannot be treated as part of the memorandum and can be altered by a special resolution of the company Rights which have their origin in a contract outside the articles, the terms of which contract are found in or referred to in such articles, can be altered by such alteration of the articles unless it is proved that one of the terms of such contract was that such rights should not be affected by an alteration of the articles. CHITHAMBARAM CHETTIAR *v.* KRISHNA AIYANGAR (1909) . . . **I. L. R. 33 Mad. 36**

——— ss. 128, 129, 130, and 131—Winding up petition—*Petitioner a creditor for amount not immediately payable—General financial position of company—Scheme of arrangement—Practice.* The definition of "debt" in s. 130 of the Indian Companies Act (VI of 1882) is quite distinct from the meaning of the word "creditor." A creditor is a person to whom money is owed by the Company. Whether he can claim immediate payment of that debt or his right to demand payment is deferred by his agreement with the Company to a future time, he still remains a creditor. If the petitioners can satisfy the Court that the Company on a general perusal of its balance sheet cannot pay its debts, in other words, that its assets are not sufficient to satisfy its liabilities, that will enable the Court to order its winding up. If an arrangement can be arrived at between the Company and its creditors, it would be desirable that an attempt should be made to give effect to that arrangement. . . . . But any scheme or proposal by the Company to keep itself afloat cannot be discussed with any chance of success unless the winding up order is made. It is only after the winding up order is made that a three-fourths majority of the creditors is able to bind the minority. Otherwise, any one creditor can come in and upset any arrangement which has appeared satisfactory to the rest of his co-creditors. *In the matter of* INDIAN COMPANIES ACT, *in the matter of the* BOMBAY MANUFACTURING COMPANY AND *in the matter of* RATILAL KARSONDAS (1909)
I. L. R. 34 Bom. 533

COMPANY.

See INSURANCE, FIRE.
I. L. R. 34 Bom. 1

COMPENSATION.

See CRIMINAL PROCEDURE CODE, S 250.
14 C. W. N. 212

See INFORMATION . **14 C. W. N. 326**

See LAND ACQUISITION ACT (I OF 1894), S. 18 . **I. L. R. 34 Bom. 486**

See LAND ACQUISITION ACT (I OF 1894), S 23 . . **I. L. R. 36 Calc. 967**
14 C. W. N. 134

COMPLAINT.

——— without any process being issued—

See MALICIOUS PROSECUTION.
I. L. R. 37 Calc. 358

COMPOUNDING OFFENCE.

See CRIMINAL PROCEDURE CODE, SS. 345 (2) AND 439 . **I. L. R. 32 All. 153**

COMPROMISE.

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), S. 12
I. L. R. 34 Bom. 502

See PRACTICE . **I. L. R. 34 Bom. 408**

See REGISTRATION **I. L. R. 32 All. 206**

See TRANSFER OF PROPERTY ACT, 1882, S. 54 . . **I. L. R. 34 Bom. 139**

——— Compromise decree—*Suit to set aside, on the ground that agreement was unlawful—Civil Procedure Code (Act XIV of 1882), s. 375—Administrator agreeing to execute lease for which sanction afterwards refused by Court—Probate and Administration Act (V of 1881), s. 90, cls (3) and (4)—Test, whether agreement, specifically enforcible—Specific Relief Act (I of 1877), ss 3, 21 (e)—Administrator if "trustee"— Compromise based on agreement which is unlawful in part—Decree if to be wholly set aside or in part—No universal rule.* Where a person acting for himself and also as administrator of the estate of a deceased person compromised a suit agreeing thereby to execute within a month a *dur-putni* lease of property jointly belonging to himself and the estate of the deceased and undertook previously to doing that to obtain the permission of the Court which had granted the letters of administration, but such permission was refused on the ground of the proposed lease not being beneficial to the estate: *Held*, that the administrator had acted in excess of his powers under s. 90 of the Probate and Administration Act in entering into the compromise which was therefore not a lawful compromise within the meaning of s. 375 of the Civil Procedure Code (Act XIV of 1882). Where a compromise decree has been made on the basis of an unlawful agreement a suit lies to set it aside. *Golab Koer* v. *Badshah Bahadur, 13 C. W. N. 1197; s.c. 10 C. L. J. 420*, followed. A compromise decree can be set aside on any ground on which the agreement itself could be set aside. *Huddersfield* v. *Leicester, [1895] 2 Ch. 273*, followed. If *the*

COMPROMISE—*concld.*

agreement could not be specifically enforced nor should the decree. The agreement by the administrator in this case could not be specifically enforced being one made by a trustee in excess of his powers, within the meaning of s. 21, cl (*e*) of the Specific Relief Act *Held*, that in the circumstances of the case the whole decree should be set aside and not merely the portion affecting the estate of the deceased. Whether in such a case the decree should be set aside in its entirety or only to the extent directly affected by the illegality would depend upon the circumstances of the case, and no universal rule can be laid down with regard to it. SARBESH CHANDRA BASU *v.* HARI DOYAL SINGH (1910) . . . . **14 C. W. N. 451**

COMPROMISE AFTER DECREE.

——— **Execution of**—*Adjustment of mesne profits after decree enforceable by execution—When decree becomes incapable of execution* Where, in a suit for land and mesne profits, the decree leaves the amount of mesne profits undetermined, the suit to that extent remains undisposed of and it is open to the parties to adjust that portion of the suit by a lawful compromise; and a decree made in accordance with the terms of such compromise can be enforced by execution. Where such compromise provides that the amount of mesne profits must be recovered by execution first against certain land, execution cannot be taken against the person of the judgment-debtor, merely because the land is not immediately available for sale in execution It must be shown that the obstacle is one which cannot be removed. VYTHINADA AIYAR *v.* VYTHINADA AIYAR (1909) . . . **I. L. R. 33 Mad. 78**

CONCURRENT JURISDICTION.

See PROBATE . **I. L. R. 37 Calc. 224**

See RESTORATION OF SUIT.
14 C. W. N. 558

CONFESSION.

——— **admissibility of**—

See JURY, RIGHT OF TRIAL BY.
I. L. R. 37 Calc. 467

1. ——— **Admissibility of confession**—*Admissibility of statement alleging whether truly or not, that it was not voluntary—Evidence Act (I of 1872), s. 24.* A statement in writing by the accused, which contains an allegation from which it is to be inferred that the statement of which it forms a part was not made voluntarily, is inadmissible. EMPEROR *v.* TARANATH ROY CHOWDHRY (1910) . . . **I. L. R. 37 Calc. 735**

2. ——— **Criminal Procedure Code, 1898, ss. 164, 342, 364**—*Evidence Act, 1872, s. 29.* A confession under s 164 of the Criminal Procedure Code must be made either in the course of an investigation under Chapter XIV, or after it has ceased and before the commencement of the inquiry or trial. The condition requiring the confession to be prior to the

CONFESSION—*concld.*

commencement of the inquiry or trial is only imposed when the investigation has ceased, and not when it is made in the course of the police investigation. Where a number of persons were arrested on the 1st May, and the confessions of some of them were recorded on the 4th and 5th, while others were brought in subsequently and their confessions taken while the police investigation was then actually going on, and on the 17th an order under s. 196 was obtained and the police report sent in, and on the next day the examination of the prosecution witnesses begun:—*Held*, that the Magistrate did not take cognizance under s 190 of the Code, nor did the inquiry commence on the 4th, and that the confessions were taken in the course of an investigation under Chapter XIV. The fact that the Magistrate who has taken the confessions, afterwards holds the inquiry, does not, under s. 164, constitute the recording of the confessions an examination of the accused in the course of it and at its commencement *Empress* v. *Anuntram Singh, I L. R 5 Calc. 954*, and *Empress* v. *Yakub Khan, I. L R. 5 All 253*, declared obsolete. *Sat Narain Tewari* v. *Emperor, I. L. R. 32 Calc 1085*, distinguished S. 164 includes confessions taken by a Magistrate who afterwards holds such inquiry or trial. *Empress* v. *Anuntram Singh, I. L. R. 5 Calc. 954*, and *Reg.* v. *Bai Ratan, 10 Bom. H. C. 166*, declared obsolete on the point. Ss. 164, 342 and 364 of the Code are not exhaustive, and do not limit the generality of s. 21 of the Evidence Act as to the relevancy of admissions. *Queen-Empress* v. *Narayen, (1893) Ratan Lal Unrep. Cr. C. 679*, referred to. The mere fact that a statement was elicited by a question does not make it irrelevant as a confession under s. 164 of the Criminal Procedure Code or s. 29 of the Evidence Act, though such fact may be material on the question of its voluntariness. BARINDRA KUMAR GHOSE *v.* EMPEROR (1909)
I. L. R. 37 Calc. 467

CONSEQUENTIAL ORDER.

See COMPENSATION . **14 C. W. N. 212**

CONSEQUENTIAL RELIEF.

See SPECIFIC RELIEF ACT, SS. 9, 42.
I. L. R. 33 Mad. 452

CONSIDERATION.

See STAMP-DUTY . **I. L. R. 37 Calc. 634**

CONSOLIDATION.

See MORTGAGE . **I. L. R. 32 All. 651**

CONSPIRACY TO WAGE WAR.

See JURY, RIGHT OF TRIAL BY.
I. L. R. 37 Calc. 467

CONSTRUCTION.

See CONTRACT . **I. L. R. 37 Calc. 334**

CONSTRUCTION OF CONTRACTS.

See CARRIER, LIABILITY OF.
I. L. R. 33 Mad. 120

See PRINCIPAL AND AGENT.
I. L. R. 34 Bom. 292

CONSTRUCTION OF DOCUMENTS.

See OUDH ESTATES ACT (1 OF 1869), SS. 13, 16 AND 17 **I. L. R. 32 All. 227**

See PRE-EMPTION.
I. L. R. 32 All. 63, 187, 201, 399

——— **Test to determine whether document is testamentary**—*No will when there is no power to revoke* One of the invariable tests in coming to a conclusion as to the testamentary character of a paper is whether the paper is revocable. If it is not revocable, the document is not a will The fact that the paper is drawn in the form of an agreement and that it is registered are circumstances to be taken into consideration, though they do not *per se* amount to much Where the document contains provisions which are not of an ambulatory character, the presumption will be against the testamentary nature of the document and the fact that such provisions are expressed to operate in the future will not affect the nature of the document. The intention of the party will be given effect to, though it is expressed in inappropriate language. The reservation of a life interest does not of itself suffice to make the document testamentary. *In the matter of "Reference by the Collector and Superintendent of Stamps, Bombay"* 7. *L. R. 20 Bom. 210, 214*, referred to. *In the goods of Robinson, L. R. 1 P. & D. 384*, referred to RAJAMMAL *v.* AUTHIAMMAL (1909)
I. L. R. 33 Mad. 304

CONSTRUCTION OF STATUTES.

1. ——— *Bombay Land Revenue Code (Bom. Act V of 1879), s 48.* The Bombay Land Revenue Code (Bom. Act V of 1879) is a taxing enactment and must be construed strictly in favour of the subject. SECRETARY OF STATE *v* LALDAS (1909) . **I. L. R. 34 Bom. 239**

3. ——— *City of Bombay Municipal Act (Bom. Act III of 1888), s. 251A, cl. (a)—Building—"Directly over or directly under"—Construction.* Where it is not suggested that a word bears any technical sense in the context in which it occurs, the construction must proceed upon the general rule that statutes are presumed to use words in their popular sense. CURRIMBHOY EBRAHIM *v.* MUNICIPAL COMMISSIONERS (1909)
I. L. R. 34 Bom. 496

CONTINUING OFFENCE.

See ENCROACHMENT.
I. L. R. 37 Calc. 671

See PROSECUTION **I. L. R. 37 Calc. 545**

CONTRACT.

——— **Construction of**—"*Or 700-800, say seven to eight hundred tons*" *Words of description and not of estimation—Warranty—Equitable set-off.* The plaintiff, owner of a stock of coal at Shalimar Depôt, agreed to sell to the defendants "the entire stock at Shalimar Depôt or 700-800, say seven to eight hundred tons of steam coal" for immediate delivery. The entire stock at Shalimar Depôt in fact amounted to 469 tons only, which the plaintiff duly delivered. On a suit by the plaintiff for the price of the coal sold and delivered:—*Held*, that the words "or 700-800, say seven to eight hundred tons," must be construed to be descriptive of the words "entire stock" and not merely words of estimation; that the delivery of only 469 tons was a breach of the contract by the plaintiff and that the defendants were entitled to set-off against the plaintiff's claim the damages caused by such breach KALLYANJEE SHAMJEE *v* SHORROCK (1910)
I. L. R. 37 Calc. 334

CONTRACT ACT (IX OF 1872).

——— **ss. 11, 64, 65, 70—Sale by a minor**—*Discharge of mortgage by vendees—Sale not completed—Suit by vendees to recover consideration paid.* *H* and *R*, two Hindu widows of whom *R* was a minor, sold a shop to the plaintiffs. Registration of the sale-deed was refused, and the vendees thereupon sued to recover R231 alleged to have been paid to certain mortgagees in discharge of a mortgage on the shop, and R100 as paid in cash to the vendors, and they asked for sale of the shop. *Held*, that the sale being by a minor, the plaintiffs acquired no interest to support their discharge of the mortgage, and that the remaining sum of R100 not having been paid for necessaries was also not recoverable SHIAM LAL *v.* RAM PIARI (1909) . . . **I. L. R. 32 All. 25**

——— **ss. 16, 19A—Undue influence**—*Contract—Facts necessary to justify interference of Court on the ground of undue influence.* The power of a court to interfere with contracts alleged to be unconscionable is limited by the provisions of the Indian Contract Act, 1872, ss. 16 and 19A. The fact that an excessive rate of interest is charged in a contract is not alone sufficient to establish that the making thereof has been induced by undue influence, but the court must also find that the lender was in a position to dominate the will of the borrower when the contract was entered into before any presumption arises that the contract was induced by undue influence. *Balkishan Das* v. *Madan Lal, All Weekly Notes (1907) 55. Kirpa Ram* v. *Sami-ud-din Ahmad Khan, I. L. R. 25 All. 284*, and *Dhampal Das* v. *Maneshar Baksh Singh, I. L. R. 28 All. 570*, referred to. DEBI SAHAI *v.* GANGA SAHAI (1910) **I. L. R. 32 All. 589**

——— **s. 23.**

See PUTNI . . **14 C. W. N. 1031**

——— **s. 25, cl. (3)—Barred debt**—*Not necessary that the agreement should in terms refer to the barred debt.* A promissory note purported to

CONTRACT ACT (IX OF 1872)—*contd.*

——— s. 25, cl. (3)—*contd.*

be executed for cash received, but the real consideration was proved to be a debt, the recovery of which was barred by the Statute of Limitations :— *Held*, that the promissory note was a contract enforceable under s. 25, cl. (3) of the Indian Contract Act A party to a contract may prove that the actual consideration was something different from that recited in the document and effect must be given to the real consideration A contract falling within s 25, cl. (3) of the Indian Contract Act is no exception to this rule. The agreement will be enforced if the real consideration is shown to be a barred debt, though no reference is made in the document to such debt. *Appa Rao* v. *Suryaprakasa Rao, I L R. 23 Mad 94*, considered. *Vasudeva* v. *Narasimma, I. L. R 5 Mad. 6, 8*, referred to. *Kumara* v. *Srinivasa, I L. R 11 Mad. 213, 215*, referred to. GANAPATHY MOODELLY *v.* MUNISAWMI MOODELLY (1909)

I. L. R. 33 Mad. 159

——— **ss. 39, 73, 120**—*Suit for price of goods bargained and sold—Cause of action—Indian Contract Act has not altered the law relating to recovery of debts and liquidated demands—Civil Procedure Code (Act V of 1908), s 128.* Before the passing of the Indian Contract Act wherever a consideration was executed for which a debt payable at the time of action had accrued due either under an express promise or under one implied by law the debt might be sued for in an *indebitatus* count, thus the count lay where the consideration moving from the seller of goods was executed by his providing goods and only the money debt due by the buyer remained The form of count in such a case both in England and in Bombay would have been for money payable by the defendant to the plaintiffs for goods bargained and sold by the plaintiffs to the defendant. The cause of action was said to sound in debt and not in damages In s. 128 of the Civil Procedure Code of 1908 there is legislative recognition that such suits as were maintainable in respect of debts at the time of the Common Law Procedure Act, 1852, are still maintainable in British India. The Indian Contract Act has not altered the law relating to the recovery of debts and liquidated demands The fact that a party to a contract may under s 39 of the Indian Contract Act, when the other side has refused to perform it, put an end to it and sue for compensation for the breach does not oblige him to take that course at his peril ; he may if he prefers to sue to recover any debt due to him which has arisen from his execution of his part of the contract. *Per* BATCHELOR, *J.* S. 73 of the Indian Contract Act prescribes the method of assessing the compensation due to a plaintiff suing upon a breach of contract, but it does not affect to extinguish or to limit a plaintiff's right to recover a determined sum due to him upon a contract which he for his part keeps on foot. If that is so, the mere absence from the Act of a specific provision giving the remedy of a suit to recover the price cannot be construed as the distinct legislative withdrawal of that remedy. P. R. & Co. *v.* BHAGWANDAS (1909)

I. L. R. 34 Bom. 192

CONTRACT ACT (IX OF 1872)—*contd.*

——— ss. 39, 73, 120—*concld.*

——— **s. 43.**

See CIVIL PROCEDURE CODE, 1882, s. 43.

I. L. R. 33 Mad. 317

——— **ss. 43, 70.**

See DEPOSIT . . **14 C. W. N. 945**

——— **s. 45**—*Partnership—Suit by surviving members to recover debt due to firm—Representatives of deceased members not necessary parties to suit. Held*, that the representatives of a deceased partner are not necessary parties to a suit for recovery of a debt which accrued due during the lifetime of the deceased partner. *Held*, also, that s 45 of the Indian Contract Act does not apply to a suit to recover a debt due to a partnership firm. *Gobind Prasad* v. *Chandra Sekhar, All Weekly Notes (1887) 133 Motilal Bechardass* v. *Ghellabhai Harnam, I. L. R. 17 Bom. 6*, and *Debi Das* v. *Narpat, I. L. R. 20 All. 365*, followed. UGAR SEN *v* LAKHMI CHAND (1910) . . **I. L. R. 32 All. 638**

——— **ss. 55, 64, 73, 74—Right of party to recover deposit, forfeited by terms of contract.** *A* entered into a contract with *B* for the purchase of lands belonging to the latter for R41,000. Of this amount R4,000 was paid in advance, R20,000 was agreed to be paid by means of a mortgage and the balance before the 24th May when the conveyance was to be executed. The contract provided that the R4,000 was to be forfeited if there was any delay on the part of the vendee. It was also stipulated that the vendor was to execute the conveyance either in favour of the purchaser or those nominated by him. In part performance of this contract a sale of a portion of the lands was effected in favour of *M* on the 28th March. Just before the day of payment *B* gave notice to *A* that if the sale was not completed on or before the agreed date, the contract would be avoided. *A* failed to perform the contract before that date Subsequently *B* sold the lands to third parties and realised R1,500 in excess of the price stipulated by *A*. *A* brought a suit for specific performance of the contract or, in the alternative, to recover the R4,000 paid by him. The Subordinate Judge disallowed the claim for specific performance but decreed the return of the deposit of R4,000 to *A*. On appeal by *B* against this decree : *Held, per* WALLIS *J.*, that *A* was not entitled to a return of the deposit. Time was of the essence of the contract and *B* was justified in avoiding it under s 55 of the Indian Contract Act. *A* was not therefore entitled to specific performance or to damages A deposit is primarily a security or guarantee for the performance of the contract. The provisions of s 64 of the Contract Act requiring a party who avoids a contract to restore any benefit derived thereunder do not extend to

CONTRACT ACT (IX OF 1872)—*contd.*

——— ss. 55, 64, 73, 74—*concld.*

such deposits. Ss 73 and 74 of the Act do not apply to such cases. The distinction drawn by Courts of Equity between stipulations for liquidated damages and those for penalty have no bearing on such cases A stipulation for forfeiture of deposit is not a stipulation for a penalty and it is not agreed upon as liquidated damages, though it goes in reduction of damages. *Maman Patter* v. *The Madras Railway Co , I. L R. 29 Mad. 118*, referred to *Srinivasa* v. *Rathnasabapathy, I. L. R. 16 Mad 474*, referred to. *Per* SANKARAN NAIR, *J.* *A* was entitled to a return of the deposit. To entitle a vendor to retain the deposit, there must be acts by the purchaser which not only amount to delay sufficient to deprive him of the remedy by specific performance but which would make his conduct amount to a repudiation of the contract. A purchaser may recover damages if he shows his readiness and willingness to complete the contract within a reasonable time after the stipulated date ; and that vendor rescinding the contract before the lapse of such reasonable time, cannot retain the deposit, though his rescission may be lawful A contract does not go off merely by non-payment before the stipulated time. The vendor becomes entitled to damages under ss. 73 and 74 of the Contract Act, but the contract itself is not at an end. The stipulation as to forfeiture in this case must be treated as a penalty. The rule that the distinction between penalty and liquidated damages do not apply to pecuniary deposits, holds good only when there is no means of accurately ascertaining the damages. Where they can be ascertained and are below the deposit amount, the presumption will be that the parties intended it as a penalty and the deposit will not be forfeited. Ss. 73 and 74 of the Contract Act apply to pecuniary deposits and " penalty " includes deposits. Where a person at whose option a contract is voidable rescinds it under s 55 of the Contract Act, before the contract is determined by the default of the other party, he will be entitled to recover damages under ss. 73 and 74 of the Act. He must however return the deposit as a " benefit " within the meaning of s. 64 of the Act. NATESA IYER *v.* APPAVU PADAYACHI (1909) **I. L. R. 33 Mad. 375**

——— s. 65.

See AGRA TENANCY ACT (II OF 1901), SS. 19 AND 20 . **I. L. R. 32 All. 383**

——— s. 68—**Debt by minor**—*Necessaries—Hindu Law—Joint Hindu Family—Money borrowed to defray expenses of sister's marriage.* One of the brothers in a joint Hindu family, consisting of two brothers and a sister, all minors, the sister being about 13 years of age, borrowed a sum of money to provide for the expenses of the sister's marriage. After the death of the borrower the lender sued the surviving brother to recover the sum so advanced from the property of the joint family in his hands. *Held*, that the suit was maintainable notwithstanding that the deceased brother was a minor at the time that the money was advanced. *Tulsha* v. *Gopal Rai, I. L. R. 6 All. 632, Vaikuntam Ammangar* v. *Kallapiran Ayyangar, I. L. R. 23 Mad. 512, Sham Charan Mal* v. *Chowdhry Debya Singh, I. L. R 21 Calc 872*, and *Chapple* v *Cooper, 13 M. & W. 252*, referred to. NADAN PRASAD *v.* AJUDHIA PRASAD (1910) **I. L. R. 32 All. 325**

CONTRACT ACT (IX OF 1872)—*contd.*

——— s. 68—*concld.*

——— s. 69.

See CONTRIBUTION . **14 C. W. N. 361**

See REVENUE RECOVERY ACT, SS. 3, 35. **I. L. R. 33 Mad. 41**

——— **'Interested in paying,' meaning of**—*When payment not voluntary.* A person is interested in making a payment within the meaning of s. 69 of the Contract Act, when there is an apprehension of any loss or inconvenience or of any detriment capable of being assessed in money A person whose immoveable property is attached for a debt due by another is ' interested ' in paying the debt to save the property and can recover from the person by whom it is due. Payment under such circumstances is not a voluntary payment. SUBRAMANIA IYER v. RUNGAPPA REDDI (1909) . . . **I. L. R. 33 Mad. 232**

——— s. 70.

See RENT DECREE . **14 C. W. N. 699**

——— *S. 70 of the Contract Act does not apply where, the party sought to be made liable, though benefited, had no option but to enjoy the benefit.* In order to enable a party to recover money paid by him from another under s. 70 of the Indian Contract Act, it is necessary that the party sought to be made liable must not only have benefited by the payment but must also have had the opportunity of accepting or rejecting such benefit Where no such option is left to him and the circumstances do not show that he intended to take such benefit, he cannot be said to have " enjoyed such benefit " within the meaning of the section. When the person paying is interested in making the payment, he cannot be presumed, in the absence of evidence to show that he intended to act for the other party also, to have acted for such other party. S. 70 of the Contract Act reproduces the English Law as laid down in *Lampleigh* v. *Brathwait, 1 Sm. L C 163, Abdul Wahid Khan* v. *Shaluka Bibi, I. L. R 21 Calc 496, 504*, followed. *Damodara Mudaliar* v. *Secretary of State for India, I. L. R. 18 Mad. 88*, considered. A person paying money into Court under s 310A of the Civil Procedure Code of 1882 to set aside a sale in execution, cannot recover such money from the defendant who has obtained possession of the property when he has made the payment to protect his own interest and the circumstances do not show that he would not have made the application if the defendant had not consented. YOGAMBAL BOYEE

CONTRACT ACT (IX OF 1872)—*contd.*

——— s. 70—*concld.*

AMMANI AMMAL *v.* NAINA PILLAI MARKAYAR (1909) . . . . **I. L. R. 33 Mad. 15**

——— s. 74—**Mortgage**—*Provision for lower rate of interest in case of punctual payment—Penalty.* If a mortgagee stipulate for a higher rate of interest in default of punctual payment he must reserve the higher rate as payable under the mortgage and provide for its reduction in case of punctual payment, and if he do so he will be entitled to recover the higher rate. But he cannot effect his object by reserving the lower rate and then fixing a higher rate in case of non-payment of the lower rate at the appointed time, such an agreement being considered in the nature of a penalty. *Wallis* v. *Smith, L. R. 21 Ch. D. 261*, referred to KUTUB-UD-DIN AHMAD *v.* BASHIR-UD-DIN (1910) . . **I. L. R. 32 All. 448**

——— s. 90—**Wagering Contract**—*Intention of the parties—Payment of differences—Contract Act (IX of 1872), s. 57.* There is no authority for the proposition that, because under the terms of a contract an obligation to pay or receive differences may arise on the happening of a particular event, the contract is void as a wager if that event does not happen. Such a result would be inconsistent with the principle underlying s. 57 of the Contract Act. JOSHI NARBADASHANKAR *v.* MATHURADAS (1910) . . **I. L. R. 34 Bom. 519**

——— s. 93.

See JURISDICTION . **I. L. R. 34 Bom. 13**

——— ss. 134, 151.

See HINDU LAW . **I. L. R. 33 Mad. 308**

——— ss. 215, 216—**Principal and Agent**—*Construction of Contract—Agent appointed to sell goods buying them on his own account.* S. 216 of the Indian Contract Act is merely enabling and confers upon the principal the right to claim from his agent the benefit of the transaction to which the agency business related, where the agent, without the knowledge of the principal, has dealt with the business on his own account, instead of on account of the latter. The principal is free to exercise that right or not. The law is that where a party elects to adopt a transaction, he must take its benefit with his burden. He cannot, as is said, "both approbate and reprobate." But both the benefit and the burden must, for that purpose, be attached to and incidents of the transaction which the principal has affirmed by election. Where an agent appointed to sell his principal's goods for a fixed price buys them on his own account without the previous consent of the latter, it is competent for the principal either to repudiate the transaction under the circumstances mentioned in s. 215 of the Contract Act or to affirm it. If he elects to affirm, the principal will be liable to pay to the agent such charges only as are incidents of the transaction of purchase, that is, such as the vendor under the contract would have been liable to pay to the purchaser, because what is affirmed is the relation of vendor and purchaser. But if those charges are annexed by the terms of the contract to the agency, so as to regulate the relation of principal and agent as distinguished from the relation of vendor and purchaser, the agent is not entitled to recover them. *Salomons* v. *Pender, 3 H. & C. 639* and *Andrews* v. *Ramsay & Co., [1903] 2 K. B. 635*, referred to. JOACHINSON *v.* MEGHJEE VALLABHDAS (1909) **I. L. R. 34 Bom. 292**

CONTRACT ACT (IX OF 1872)—*concld.*

——— ss. 215, 216—*concld.*

——— s. 233.

See PRINCIPAL AND AGENT. **14 C. W. N. 414**

CONTRADICTORY STATEMENTS.

See SANCTION FOR PROSECUTION. **I. L. R. 37 Calc. 618**

CONTRIBUTION.

——— suit for—

See RENT DECREE . **14 C. W. N. 699**

1. ——— **Attachment**—*Purchase of part of attached property by a third party who satisfies the whole claim—No right of contribution against the remainder acquired by the purchaser.* An attaching creditor does not obtain by his attachment any charge or lien upon the attached property. Where therefore a third party purchased a portion of certain property under attachment and satisfied the whole of the creditor's claim: *Held*, that the purchaser acquired no right of contribution as against the remainder of the attached property. *Moti Lal* v. *Karrabuldin, I. L. R. 25 Calc. 179, Peacock* v. *Madan Gopal, I. L. R. 29 Calc. 428*, and *Miller* v. *Lukhmani Debi, I. L. R 28 Calc. 419*, referred to. LALTA PRASAD *v.* ZAHUR-UD-DIN (1910) **I. L. R. 32 All. 479**

2. ——— **Mortgage-sale**—*Sale set aside by consent on one of co-mortgagors paying off decree—Liability of other co-mortgagors to contribute—Equity—Contract Act (IX of 1872), s. 69—Charge.* Where a mortgage-decree having been passed against several persons, a sale of the mortgaged property took place, and then one of the mortgagors paid off the decree-holder and by consent the sale was set aside: *Held*, in a suit by him against the other mortgagors for contribution, that although the defendants were not liable under s. 69 of the Contract Act, the plaintiff not having paid the money to prevent the sale, the defendants who kept the property were bound in equity to pay their share of the money which the plaintiff had paid to release the property. The amount was declared to be a charge on the shares of the defendants. PARBHU NARAIN SINGH BAHADUR *v.* BABU BENI SINGH (1909) . **14 C. W. N. 361**

3. ——— **Purchasers of mortgaged property**—*Mode of calculating amount as*

CONTRIBUTION—*concld.*

between purchasers of different items of mortgaged property. *M* mortgaged 3 items of property to one *S* for 1,300 rupees. Two of these items were sold to two persons for Rl,200, and the deeds of sale provided that the amounts for which the profits were sold should be paid to the mortgagee. The sale of the third item was for cash, but the property was not sold free of encumbrance and there was no contract between *M* and the third purchaser that the lands sold to the other purchasers should be liable for the 1,200 rupees of the mortgaged money. *S* assigned his mortgage and the assignee obtained a decree for the full amount due on the mortgage and in execution the properties sold to the third purchaser were brought to sale and the third purchaser paid up the amount to avoid the sale. In a suit by the third purchaser for contribution, it was contended by the third purchaser, that the amount of 1,200 rupees should be borne by the other two purchasers and the rateable contribution on all the properties should be only in respect of the balance left after deducting such amount:—*Held*, that the contribution must be calculated on the footing that all the properties were liable for the full amount. The benefit of the covenants in the sale-deeds to the other two purchasers did not run with the land and the third purchaser could claim the benefit of such covenants only on a contract with the mortgagor giving him such benefit. SESHAGIRI AIYAR *v.* VYTHILINGA PILLAI (1909) . . . **I. L. R. 33 Mad. 211**

4. ——— Decree for costs—*Some defendants not contesting suit—Liability for contribution not a necessary consequence of a joint decree.* The mere fact that a decree for costs has been made against several persons jointly will not of itself render the co-defendants liable in a suit for contribution; but if one of the defendants pays the full amount of costs and then sues his co-defendants for contribution, he should show some equity existing between himself and his co-judgment-debtors making the latter liable for contribution. *Dearsly* v. *Middleweek, L. R. 18 Ch. D 236*, referred to. MULLA SINGH *v.* JAGANNATH SINGH (1910) **I. L. R. 32 All. 585**

CONTRIBUTORY NEGLIGENCE.

——— Negligence of Railway Company—*Breach of statutory duty—Injury to passenger with arm outside carriage window—Contractual obligations.* The fact that a door on a moving train is open is evidence, but not conclusive proof, of negligence on the part of the Railway Company. Where there is a statutory obligation, any breach of it which causes an accident is conclusive against the defendant apart from special proof of negligence But the breach must in itself be the cause of the accident, and the rule does not extend so far as to exclude the defence of contributory negligence. In view of the contractual relations between the parties, a Railway Company is not liable for injuries caused to any part of a

CONTRIBUTORY NEGLIGENCE—*concld.*

passenger which is outside the carriage in which he is travelling, provided that such injuries could not have been received had the passenger remained inside the carriage. The application of the rule that, where there is negligence on both sides, the negligence of the person who had the last chance of averting the accident is the efficient cause thereof, must be restricted to cases where the danger was apparent to both or at least one of the parties before the accident actually happened. DULLABHJI SAKHIDAS *v.* THE G. I P. RAILWAY CO (1909) **I. L. R. 34 Bom. 427**

CONVEYANCE.

See VENDOR AND PURCHASER. **I. L. R. 37 Calc. 362**

CO-PARCENER.

See HINDU LAW—MINOR. **I. L. R. 34 Bom. 72**

CO-PARTNERS.

——— liability of—

See PARTNERSHIP . **14 C. W. N. 1106**

CO-SHARER.

——— liability of—

See PENAL CODE, S. 225B **I. L. R. 32 All. 116**

COSTS.

See CIVIL PROCEDURE CODE, 1882, S. 206. **14 C. W. N. 556**

See CONTRIBUTION **I. L. R. 32 All. 585**

See SOLICITOR'S LIEN FOR COSTS **I. L. R. 34 Bom. 484**

——— Guardian ad litem of a lunatic—*Personal liability of guardian to pay costs incurred by unnecessary appeal.* The guardian *ad litem* appointed by the Court usually gets his costs out of the estate of the defendant whom he represents if he does not recover them from the plaintiff, but when a guardian *ad litem* takes it upon himself to appeal against a decree, he puts himself in the position of a next friend initiating proceedings, and no longer is in the position of a passive guardian *ad litem*. SHAPURJI HORMASJI *v.* MONOSSEH JACOB (1909) **I. L. R. 34 Bom. 374**

COUNSEL.

——— if competent witness—

See MALICIOUS PROSECUTION. **14 C. W. N. 86**

"COURT."

See PRACTICE . **I. L. R. 34 Bom. 408**

——— *Offence brought under the notice of the Court in the course of a judicial proceeding—Proceeding instituted by one Munsif for resistance to attachment of moveables in execution—Preliminary inquiry and final order by successor—Legality of order—"Judicial proceeding"—Execution proceedings—Criminal Procedure Code.*

"COURT"—*concld.*

(Act V of 1898), ss 4 (m), 476. The word "Court" in s. 476 of the Criminal Procedure Code includes the successor of the Judge before whom the alleged offence was committed, or to whose notice the commission of it was brought in the course of a judicial proceeding. Where, therefore, the judgment-creditor brought to the notice of the Munsif, on the 23rd December 1908, the fact of resistance to the attachment of moveables in execution of his decree, and the Munsif called upon the opposite party to show cause, but his successor, after holding a preliminary inquiry under s 476 of the Code, ordered their prosecution on 6th October 1909, for offences under ss 183, 186 and 353 of the Penal Code: *Held*, that the order was not without jurisdiction. Action under s 476 should, as far as possible, be prompt and expeditious and not unduly protracted The definition of a "judicial proceeding" in s. 4 (*m*) of the Criminal Procedure Code is not exhaustive. It includes an execution proceeding; and the resistance to the attachment of moveables is, when reported or complained of to the Court, an offence brought under its notice in the course of a judicial proceeding within the meaning of s. 476 of the Code BAHADUR *v* ERADATULLAH MALLICK (1910)
I. L. R. 37 Calc. 642

COURT FEE.

See COURT-FEES ACT (VII OF 1870), SS. 5 AND 12 . **I. L. R. 32 All. 59**

——— **acceptance of by Deputy Registrar—**

See APPEAL, VALUATION OF.
I. L. R. 37 Calc. 914

COURT-FEES ACT (VII OF 1870).

——— **ss. 5, 12**—*Court-fee—Decision of Taxing Officer final as to category* The decision of the Taxing Officer as the proper amount of court-fees payable on a memorandum of appeal, as also incidentally his decision as to the category within the suit falls, is final and binding upon the Court under s. 5 of the Court-Fees Act, 1870 KUNWAR KARAN SINGH *v* GOPAL RAI (1909)
I. L. R. 32 All. 59

——— **s. 5, Sch. I, Art. 1, Sch. II, Art. 17, cl. (6).**

See APPEAL, VALUATION OF.
I. L. R. 37 Calc. 914

——— **s. 7, sub-s. 4, cls. (c), (d).**

See JURISDICTION **I. L. R. 34 Bom. 267**

See post, s. 7, CLS. (V) AND (VI).

——— **s. 7, cls. (v) and (vi)**—*Court fee—Suit for pre-emption of sale of mortgaged property—Property in possession of usufructuary mortgagee—Possession not claimed. Held*, that in a suit for pre-emption of a sale of land the fact that the land is

COURT-FEES ACT (VII OF 1870)—*contd.*

——— **s. 7, cls. (v) and (vi)**—*concld.*

subject to a usufructuary mortgage and immediate possession cannot be obtained, or is not in fact sought, does not prevent the application of s. 7 (vi) of the Court-Fees Act to the suit; but the plaintiff must pay court-fees upon the value of the land computed in accordance with s. 7 (v) of the Act. *Ram Raj Tewari* v. *Girnandan Bhagat, I. L. R. 15 All. 63*, distinguished. DARYAO SINGH *v.* BHARAT SINGH (1909) . . **I. L. R. 32 All. 19**

——— **s. 7, Sch. III, cls. 3, 4**—*Suit for dissolution of partnership—Preliminary decree—Appeal—Court-fee.* In a suit for dissolution of partnership the defendants appealed against the preliminary decree, pleading that they had no interest in the partnership, and that they sought only a declaration to that effect. *Held*, that the appellants ought to pay an *ad valorem* fee according to the amount at which the relief sought was valued in the memorandum of appeal. BHOLA NATH *v.* PARSOTAM DAS (1910) . . . **I. L. R. 32 All. 517**

——— **s. 11.**

See BENGAL, N.-W. P. AND ASSAM CIVIL COURTS ACT (XII OF 1887), s. 21.
I. L. R. 32 All. 222

——— **s. 12.**

See APPEAL . . **14 C. W. N. 343**

——— **s. 19-I (1) and Sch. III**—"*Property held in trust not beneficially*"—*Undivided share of deceased co-parcener not "property held in trust not beneficially"—Surviving co-parcener applying for Letters of Administration liable to pay court-fees on the value of share of deceased co-parcener.* Under the Mitakshara Law as administered in this part of India, an undivided co-parcener has power to mortgage or alienate his undivided share and he can at any time enforce partition of his own share He cannot therefore be said to hold *his own* share of the undivided property "as trust-property," not beneficially or with general power to confer a beneficial interest in it, within the meaning of these words as used in Annexure *B* of the form for valuation in Sch. III of the Court-Fees Act, although, as regards the shares of others, he may be said to so hold them. Where a surviving co-parcener governed by the Mitakshara Law, applies for Letters of Administration in respect of property standing in the name of a deceased co-parcener, which was joint family property of the applicant and the deceased, is bound to include in the valuation of the property, the value of the share to which the deceased was entitled at the moment of his death, and he cannot, under s. 19-I (1) of the Court-Fees Act, obtain Letters of Administration to the joint family property, unless he includes such share in the valuation and pays the proper *ad valorem* court-fees upon it. *In the goods of Pokermul Augurwallah, I. L. R. 23 Calc. 28*, referred to but not followed. *In the goods of Brindabun*

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 110—*Security for good behaviour—Order for security passed upon failure of charge of a substantive offence against the persons bound over.* Eight persons were sent up for trial on a charge of dacoity and were acquitted, and an attempt to prove a case against them under s 400 of the Indian Penal Code was also unsuccessful. *Held*, that these circumstances were not in themselves a bar to proceedings being shortly afterwards initiated against the person acquitted under s 110 of the Code of Criminal Procedure *Alep Pramanik v. King-Emperor, 11 C W. N 413*, distinguished EMPEROR *v* RAJ KARAN (1909) **I. L. R. 32 All. 55**

——— ss. 117 (*4*), 122, 123 (*3*), 367, 424.

See SECURITY FOR GOOD BEHAVIOUR.
I. L. R. 37 Calc. 91

——— s. 122.

See SURETY FOR GOOD BEHAVIOUR.
I. L. R. 37 Calc. 446

——— *Sureties in bad livelihood cases, refusal of—Reasons for the refusal—Testing reasons* The Magistrate in rejecting sureties under s 122, Criminal Procedure Code, has to record his reasons for doing so. Before recording the reasons he should carefully consider and test them. This could be best done by bringing them to the notice of the persons offered as sureties and allowing them an opportunity of controverting them. ELA BUKSH *v.* EMPEROR (1910) **14 C. W. N. 709**

——— ss. 133, 138, 139—*Obstruction of a pathway—Magistrate's power to refer the matter to a jury—Bonâ fide claim to the pathway as private—Magistrate's duty to decide.* In a proceeding under Chap. X, Criminal Procedure Code, relating to the obstruction of a way, it is the duty of the Magistrate before referring the matter to the jury to decide himself whether or not the claim of right to the land in question is made in good faith and whether the pathway is a public one or not, and it is only on deciding that there is no such claim that any matter can be referred to the jury. *Dulalram Deb* v. *Baishnab Charan Deb, 10 C. W. N. 845*, followed. DHARAM MANDAL *v* GOSSAIN DAS MANDAL (1910) . . **14 C W. N. 544**

1. ——— s. 145—**Failure to file written statements in time**—*Omission to adduce evidence on date fixed—Magistrate if may pass final order without granting time* Where the parties to a proceeding under s. 145, Criminal Procedure Code, did not file their written statement or adduce evidence, though more than two months had expired from the date, the proceeding was drawn up, but applied for time to file the written statements: *Held*, that the Magistrate did not act without jurisdiction in refusing to grant time and in attaching the disputed land under s. 146, Criminal Procedure Code, on the failure of the parties to adduce evidence. *Sheikh Mansar Ali* v. *Matiullah, 12 C. W. N. 896*, distinguished.

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— ——— s. 145—*concld.*

BEJOY MADHUB CHOWDHURY *v* CHANDRA NATH CHUCKERBUTTY (1909) . . **14 C. W. N. 80**

2. **Proceedings after final order**—*Magistrate if may take proceedings by way of execution of the final orders in proceeding under—Ultra vires—Police putting party in possession—Legality.* After passing final order declaring a party to a proceeding under s 145, Criminal Procedure Code, to be in possession, the Magistrate has no jurisdiction to take any proceedings in the nature of execution of that order. Where after the Magistrate in a proceeding under s. 145, Criminal Procedure Code, had declared the first and thirp parties to be in possession of the property in dispute, the police gave formal possession to those parties by planting bamboos but disputes still not ceasing, the Magistrate held a local enquiry and again declared the possession of the first and third parties and a further inquiry was held to determine whether the property of which possession had been declared was identical with the subject of the proceeding under s. 145, Criminal Procedure Code: *Held*, that all the proceedings after the final order passed by the Magistrate in the proceeding under s. 145, Criminal Procedure Code, were *ultra vires*. There is no specific provision in the Code authorising a Magistrate to take proceedings in the nature of execution after passing orders under s. 145. KUMAR RONENDRA NARAIN ROY *v* KISHORI LAL ROY CHOWDHURY (1909) . . . . **14 C. W. N. 78**

——— s. 145, cl. (*5*).

See DISPUTE CONCERNING LAND.
I. L. R. 37 Calc. 285

——— ss. 145, 146.

See RECEIVER . . **14 C. W. N. 681**

——— ss. 145, 350.

See MAGISTRATE, TRANSFER OF.
I. L. R. 37 Calc. 812

——— s. 146.

——— *Dispute concerning land—Attachment of subject of dispute—Order of Settlement-Court in a proceeding between the same parties and relating to the attached lands—Effect of such order—Release of attachment by Magistrate—Bengal Survey Act (Beng. Act V of 1875), s. 41.* An order of the Survey and Settlement Court under the Bengal Survey Act, 1875, s. 41, is a determination by a competent Court of the rights of the parties entitled to possession of the land within the meaning of s. 146 of the Criminal Procedure Code. Where the Magistrate attached certain lands under s. 146 of the Code, and in a proceeding under s. 41 of the Bengal Survey Act, 1875, between the same parties, the same lands were found to be in the possession of the petitioner:—*Held*, that the Magistrate was bound

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd*

——— **s. 146**—*concld.*

to follow such order and to release the lands from attachment. AMBLER *v* SAMI AHMED (1910) **I. L. R. 37 Calc. 331**

— — **ss. 146, 439**—*Defect in form of written order—Jurisdiction—Revision.* Where in proceedings under Chapter XII of the Code of Criminal Procedure the initial order was defective in that it did not set forth the grounds for the Magistrate being satisfied of the existence of a dispute likely to cause a breach of the peace : but, on the other hand, both parties were fully cognizant of the matter in dispute and there was in fact danger of a breach of the peace, the High Court declined in revision to interfere with the Magistrate's order. GANGA SARAN SINGH *v.* BHAGWAT PRASAD (1909) . . **I. L. R. 32 All. 132**

——— **s. 147**—*Dispute concerning the right to act as pujari, and not the right of use of land—Easements.* S. 147 of the Criminal Procedure Code is not limited in its terms to easements, but relates to any dispute concerning the right of use of land or water. A dispute concerning merely the right to act as *pujari* in a temple, and not the right of use of the land on which it stands, is not within the scope of s. 147 of the Code. *Kader Batcha* v. *Kader Batcha Rowthan, I. L. R. 29 Mad. 237*, not followed. GUIRAM GHOSAL *v.* LAL BEHARI DAS (1910) . . **I. L. R. 37 Calc. 578**

——— *Order on police to remove a bundh thrown across a pyre—Conflict between orders of Civil and Criminal Courts.* A Magistrate is not authorised to carry out an order under s. 147, Criminal Procedure Code, *e.g.*, an order directing the removal of a *bundh*—through the agency of the police. *Pasupati Nath Bose* v. *Nando Lal Bose, 5 C. W. N. 67 ; Lalit Chandra Neogi* v. *Tarini Persad Gupta, 5 C. W. N. 335*, distinguished. MOHUNT DALMIR PURI *v.* KHODADAD KHAN (1909) . . . **14 C. W. N. 179**
s.c. I. L. R. 36 Calc. 923

——— ——— **ss. 148, 202, 293, 294, 556 Expln.**

See LOCAL INSPECTION.
I. L. R. 37 Calc. 340

——— **ss. 154, 173, 190 (*1*) (*b*).**

See CRIMINAL PROCEEDINGS, INSTITUTION OF . . . **I. L. R. 37 Calc. 49**

——— **ss. 157, 159, 476**—*Police report by Sub-inspector—Further investigation by Superintendent—Subsequent inquiry by Magistrate—Order for prosecution of witnesses examined in the Magistrate's inquiry—Penal Code (Act XLV of 1860), s. 193.* On the strength of a police report, the District Magistrate ordered the Superintendent of Police to investigate a certain case. The Superintendent made an investigation and came to the conclusion that the case was not a true one : but at the same time suggested that a Magistrate might be sent to inquire into it The District Magistrate accordingly deputed a Magistrate of the first class to inquire He made an inquiry, which resulted in an order for the prosecution of certain witnesses who had given evidence before him. *Held*, that there was no legal authority for the inquiry held by the Magistrate, and his order for the prosecution of the witnesses was therefore invalid *In the matter of the petition of Kandhaiya Lal, All Weekly Notes (1899) 87*, and *Mouli Darzi* v. *Nauranji Lal, 4 C. W. N. 351*, referred to EMPEROR *v.* ABDUL RAHMAN (1909) **I. L. R. 32 All. 30**

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **s. 157**—*concld.*

——— **ss. 162, 288**—*Indian Evidence Act (I of 1872), ss 21, 157—Evidence—Admissibility of evidence—Statements made by witness to Police and Panch—Statements made by the witness as accused before Committing Magistrate—Witness deposing to different story before Sessions Court—Corroboration of the deposition before the Committing Magistrate by statements made before the Police and the Panch—Investigating Police Officer—Deposition of, as to statements made by witnesses to him—Examination-in-chief—Practice and procedure.* During the trial of an accused person, the Sessions Judge admitted into evidence and used against the accused the following statements : (1) statements made by a witness to the Police implicating the accused, (2) the same witness' statement to the Panch, (3) and his statement as an accused person made before a Magistrate, and (4) statements made by the co-accused to the Police. The witness, when he was examined before the Committing Magistrate, gave a consistent story ; but he deposed to quite a different version when he was examined in the Sessions Court. The learned Judge disbelieved the changed story, and he used the witness' statements to the Police and his statements as an accused person and his statements to the Panch, by way of corroboration of what the witness had stated to the Committing Magistrate The accused was convicted and sentenced. On appeal :—*Held*, (i) that it was an error to admit statements Nos. 1 and 2 for the purpose of corroborating statement No. 3, for only the statements of witnesses made to the trying Court can be corroborated in the manner contemplated by s. 157 of the Indian Evidence Act, 1872. Previous statements might be used to corroborate or contradict statements made at the trial ; not to corroborate statements made prior to the trial. (ii) That statements No. 2 were altogether inadmissible as evidence of the accused's guilt, for they could at most be regarded as admissions by the co-accused which could possibly be used against himself, but could not be proved and used against the accused. The Investigating Police Officer ought not to be allowed to depose in examination-in-chief to what the witnesses stated to him. It opens up an undesirably wide field for cross-examination and leads to the attention of the Court being diverted and distracted from the true issues Moreover, it is contrary to the plain intention of

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 162—*concld.*

s 162 of the Code of Criminal Procedure, which is that such statements should be used, if at all, on behalf of and not against the person under trial. EMPEROR *v.* AKBAR BADOO (1910) I. L. R. 34 Bom. 599

——— ss. 146, 196, 235, 239, 342, 364, 447, 454, 532.

See JURY, RIGHT OF TRIAL BY I. L. R. 37 Calc. 467

——— s. 177.

See EMIGRATION . I. L. R. 37 Calc. 27

——— ss. 182, 531—*Jurisdiction—Place at which consequence of act ensues—Criminal breach of trust—Penal Code (Act XLV of 1860), s 408.* One *M* was employed as an agent by a firm in Mirzapur. Goods were entrusted to him for sale in various districts in Lower Bengal, and from time to time, as he sold goods, he remitted money to his employers at Mirzapur When called upon to furnish accounts, he offered to furnish R500 as a deposit, but did not submit any account. *Held*, that the Courts of Mirzapur had jurisdiction to try *M* for whatever offence he had committed arising out of the above transactions *Queen-Empress* v. *O'Brien, I. L. R 19 All 411*, followed. EMPEROR *v.* MAHADEO (1910) I. L. R. 32 All. 397

——— ss. 190, 497, 498.

See BAIL . . I. L. R. 37 Calc. 412

——— s. 190 (*1*) (*c*).

See JURISDICTION OF MAGISTRATE I. L. R. 37 Calc. 221

——— s. 195.

See CRIMINAL JURISDICTION. I. L. R. 37 Calc. 714 s.c. 14 C. W. N. 806

See SANCTION FOR PROSECUTION. I. L. R. 37 Calc. 618

1. ——— Further evidence—*Superior Court has no jurisdiction to order further inquiry by Subordinate Court.* A superior Criminal Court to which an appeal has been preferred under s. 195 of the Criminal Procedure Code against an order of an inferior Criminal Court granting sanction, has no power to take or call for further evidence. The power to do so given by s. 428 is limited to appeals under that chapter. KRISHNA REDDY *v.* EMPEROR (1909) . . I. L. R. 33 Mad. 90

2. ——— Sanction by Presidency Small Cause Court—*Order granted by single Judge—Powers of Full Court to revoke the sanction—Full Court not an Appellate Court—Presidency Small Cause Courts Act (XV of 1882), ss. 37, 38.* Where a sanction to prosecute has been granted by a Judge of the Presidency Small Causes Court at Bombay, the Full Court of that Court has no power to revoke the sanction. *Per* CHANDAVAR.

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 195—*concld.*

KAR, *J* The language used in ss. 37 and 38 of the Presidency Court of Small Causes Act (XV of 1882) does not appear to be appropriate for the purpose of conferring appellate jurisdiction upon the Full Court *Per* BATCHELOR, *J.* The jurisdiction conferred by s 38 of the Act is not appellate, but revisional only SHIVLAL PADMA, *In re* (1909) I. L. R. 34 Bom. 316

3. ——— False information to police, prosecution for—*Sanction to prosecute—Cognizance of offence without the complaint of the public servant with whom false information lodged.* Where on the Police reporting an information to be false, the Inspector of Police purporting to act under s. 195, Criminal Procedure Code, granted sanction for the prosecution of the informant under s. 182, Indian Penal Code, and the Magistrate took cognizance of the offence. *Semble:* That without the complaint of the public servant to whom the alleged false information was given, the Magistrate was not right in taking cognizance of the offence. ISSER *v* KING-EMPEROR (1910) 14 C. W. N. 765

——— ss. 195 (*b*), 476.

See JURISDICTION OF CRIMINAL COURT I. L. R. 37 Calc. 250

——— ss. 195 (1), cl. (*b*), 476.

See SANCTION FOR PROSECUTION. I. L. R. 37 Calc 13

——— s. 195 (*c*)

See SANCTION FOR PROSECUTION. 14 C. W. N. 479

——— s. 195, cls. (1) (*c*) and (3)—*Sanction to prosecute—Abetment of offences of forgery and personation committed not in the course of judicial proceedings.* The offence or offences in which s. 195, cl. (*1*), sub-cl. (*c*), read with cl. (*3*) of the Code of Criminal Procedure requires that sanction should be given by a court with respect of documents produced in Court must be offences committed by parties to the proceeding, whether the offence be one of the substantive offences described in s 463 or punishable under ss. 471, 475 or 476 of the Indian Penal Code, or only amounts to abetment of any such offences. EMPEROR *v.* GHANSHAM SINGH (1909) . I. L. R. 32 All. 74

——— ss. 195 (6), 439. I. L. R. 37 Calc. 714

——— ss. 195, 478—*Sanction to prosecute—Subsequent order to prosecute passed under s. 478.* The grant of a sanction to prosecute to a private individual under s. 195 of the Criminal Procedure Code, 1898, is no bar to the subsequent institution of proceedings by the Civil Court itself under s. 478 of the Code. *Queen-Empress* v. *Shankar, I. L. R. 13 Bom. 384*, followed. EMPEROR *v.* NAGJI GHELABHAI (1909) I. L. R. 34 Bom. 88

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **ss. 196, 532**—*Penal Code, ss. 121 to 124—Order of Government authorising complaint of certain offences—Delegation of power.* Where an order under s. 196 of the Criminal Procedure Code authorized a particular police officer to prefer a complaint of offences under ss 121A, 122, 123 and 124 of the Penal Code, "*or under any other section of the said Code which may be found applicable to the case,*" and the examination of the complainant also referred to the same sections:—*Held,* that no complaint under s. 121 of the Penal Code was thereby authorized by the Local Government or in fact preferred, that the Magistrate had no power to commit thereunder, and that the defect was not cured by a subsequent order obtained while the case was before the Sessions Court, authorizing a complaint under the section which was not in fact made thereafter; nor did s. 532 of the Criminal Procedure Code apply in such a case *Sham Khan's case, (1890) Punj. R Cr. J No 16,* approved of. *Queen-Empress* v. *Morton, I. L. R. 9 Bom 288,* distinguished; and *Queen-Empress* v. *Bal Gangadhar Tilak, I L. R 22 Bom. 112,* dissented from The Local Government cannot delegate to any other body or person the controlling power and discretion of determining whether cognizance shall be taken by the Court of an offence mentioned in s 196 of the Criminal Procedure Code, and its judgment must be specifically directed to the particular section, and no other, under which the prosecution is to be carried on, and the order or authority should be proceeded by a deliberate determination in this respect. An order authorizing a complaint under certain specified sections "*or under any other sections found applicable,*" if it means found by any one other than Government, involves a delegation which cannot be sustained. BARINDRA KUMAR GHOSE *v.* EMPEROR (1909) . . **I. L. R. 37 Calc. 467**

——— **s. 198.**

See PENAL CODE (ACT XLV OF 1860), s. 494 . . **I. L. R. 32 All. 78**

——— **ss. 233—236, 239**—*Misjoinder of charges—Illegality—Penal Code (Act XLV of 1860), ss. 408 and 467.* The accused was charged and tried at one and the same trial for three offences under s. 408 of the Indian Penal Code committed within a period of one year, and three offences of forgery under s. 467 of the Code, and was convicted and sentenced in respect of all the six offences. *Held,* that this was an illegality not covered by s. 537 of the Code of Criminal Procedure. *Subrahmania Ayyar* v. *King-Emperor, I L. R. 25 Mad. 61,* followed. *In re Bal Gangadhar Tilak, I. L. R. 33 Bom. 321,* referred to and discussed. EMPEROR *v* SHEO SARAN LAL (1910) . . . . **I. L. R. 32 All. 219**

——— **ss. 234, 537**—*Penal Code, s. 477A—Charge—Misjoinder of charges—Illegality.* Where a person who was sent up for trial under s. 477A of the Indian Penal Code was charged with having wilfully altered and mutilated certain accounts between the years 1907 and 1909, and the evidence showed that the subject-matter of the charge was practically five series of entries in certain sets of books: *Held,* that the charge so framed was bad, and the defect could not be remedied by s. 537 of the Code of Criminal Procedure. *Subrahmania Ayyar* v. *King-Emperor, I. L. R. 25 Mad 61,* and *Queen-Empress* v. *Mati Lal Lahiri, I. L R 26 Calc 560,* referred to. EMPEROR *v* SALIM-ULLAH KHAN (1909) **I. L. R. 32 All. 57**

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd*

——— **s 234**—*concld.*

——— **s. 235**—"*Same transaction,*" *what is—Community of purpose or design and continuity of action necessary* In order that a number of acts may be so connected together as to form part of the same transaction within the meaning of s 235, Criminal Procedure Code, community of purpose or design and continuity of action are essential elements. To constitute community of purpose, the mere existence of some general purpose or design will not be sufficient. The purpose in view must be something particular and definite There is no continuity of action where each act is a completed act in itself and the original design accomplished so far as that act is concerned. Where a company is formed with the object of defrauding the public, it cannot be said that distinct acts of embezzlement committed in the course of several years form part of the same transaction by reason of such general object. CHORAGUDI VENKATADRI *v* EMPEROR (1910) **I. L. R. 33 Mad. 502**

——— **ss. 237, 238, 423**—*Person convicted of an offence cannot on appeal be convicted of abetment of such offence.* The power of an Appellate Court under s 423 of the Code of Criminal Procedure to alter a finding must be used in accordance with the provisions of ss. 237 and 238 of the Code. Where a person who has been convicted of an offence has appealed, the Appellate Court cannot, after acquitting him of such offence, convict him of the abetment of such offence. PADMANABHA PANJIKANNAYA *v.* EMPEROR (1909) **I. L. R. 33 Mad. 264**

——— **s. 250.**

See INFORMATION . **14 C. W. N. 326**

———*In appeals under s. 250 notice to accused not imperative.* In appeals under s. 250 of the Criminal Procedure Code, it is not imperative that notice should be given to the accused. AMBAKKAGARI NAGI REDDI *v.* BASAPPA OF MEDIMAKULAPALLI (1909) **I. L. R. 33 Mad. 89**

——— **s. 256**—*Compensation for making a frivolous or vexatious complaint—Consequential order—S. 423, subs-s. 1, cl. (d)—Power of Appellate Court under.* An Appellate Court can pass an order against the complainant awarding com-

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s 256—*concld.*

pensation to the accused under s. 250, Criminal Procedure Code. Such an order may very reasonably be regarded as a consequential order within the meaning of s 423, sub-s 1, cl. (*d*) *Balli Pandey* v. *Chittan, I. L R. 28 All. 625*, dissented from. KARI SINGH *v* TUFANI DHANUK (1909) **14 C. W. N. 212**

See CROSS EXAMINATION **I. L. R. 37 Calc. 236**

——— ss. 337, 339.

See PARDON . **I. L. R. 37 Calc. 845**

——— *No true and full disclosure where witness subsequently recants his previous statement—On trial after withdrawal of pardon, if pardon pleaded in bar, jury to determine whether pardon forfeited.* A person who has accepted a tender of pardon under s. 337 of the Criminal Procedure Code and made a true and full disclosure before the inquiring Magistrate may be recalled and examined by such Magistrate; and his pardon will be forfeited if he resiles from such former statement. It is not necessary in order to forfeit the pardon that he should be examined as a witness in the Court of Sessions. He is examined in the case when he is examined by the Magistrate and the prosecution is not bound to examine before the sessions an untrustworthy witness. When such person is tried after withdrawal of pardon for the original offence and pleads the pardon as a bar, the jury must determine whether the pardon was forfeited or not. In default of such determination, a conviction will be bad. *Kullan* v. *Emperor, I. L. R. 32 Mad. 173*, referred to. *Emperor* v. *Kuthea, I L. R. 30 Bom. 611*, referred to. ALAGIRISAMI NAICKEN *v* EMPEROR (1910) . **I. L. R. 36 Mad. 514**

——— ss. 345 (2), 439—*Revision—Power of High Court in revision to give leave to compound. Held*, that the High Court can, in the exercise of its powers of revision under s. 439 of the Code of Criminal Procedure, give leave for the composition of an offence under s. 325 of the Indian Penal Code. EMPEROR *v.* RAM PIYARI (1909) **I. L. R. 32 All. 153**

——— s. 360.

See DEPOSITION . . **14 C. W. N. 82**

——— ss. 367, 424.

See JUDGMENT OF APPELLATE COURT, CONTENTS OF . **I. L. R. 37 Calc. 194**

——— s. 403.

See ACQUITTAL. **I. L. R. 37 Calc. 604**

——— *Previous acquittal, plea of—Acquittal of some accused charged with rioting, grievous hurt and murder—Liability of others to be tried for the same offences—Prosecution story found to be false as to the grievous hurt and murder.* An acquittal of some of the accused on charges of rioting armed with deadly weapons, grievous hurt and murder, is no bar, under s. 403 of the Criminal Procedure Code, to the trial of others concerned in the same offences Where the Sessions Judge was of opinion, at the original trial, that the prosecution story as to the manner in which the deceased met his death, did not represent the truth and acquitted the accused, though he did not disbelieve the fact of a rioting having occurred, while one of the Assessors believed the whole story:—*Held*, that the High Court would not interfere with a pending prosecution against others for the same offences. *Bishun Das Ghose* v. *King-Emperor, 7 C W. N. 493*, distinguished. KOKAI SARDAR *v* MEHER KHAN (1910) **I. L. R. 37 Calc. 680**

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd*

——— s. 403—*concld.*

——— s. 423, sub-s. 1, cl (*d*).

See CONSEQUENTIAL ORDER **14 C W. N 212**

——— s. 423.

See EVIDENCE ACT, s 167. **14 C. W. N. 493**

——— s. 435.

See HIGH COURT **I L. R. 34 Bom. 378**

——— ss. 437, 119—*Power to order further inquiry under s. 437 does not extend to order of discharge under s. 119.* The power conferred by s. 437 of the Criminal Procedure Code to order further inquiry cannot be exercised in the case of orders of discharge under s. 119 of the Code, where the Magistrate before making the order of discharge, has called upon the person, into whose conduct the inquiry is made, to establish his defence. The word 'discharged' in s. 437 must be read as equivalent to 'discharged within the meaning of ss. 209, 253 and 259 of the Code' VELU TAYI AMMAL *v.* CHIDAMBARAVELU PILLAI (1909) **I. L. R. 33 Mad. 85**

——— ss. 439, 476, 200—*Power of High Court to interfere under s. 439 with proceedings of Subordinate Criminal Court under s. 476.* The High Court has power under s. 439 of the Criminal Procedure Code to interfere on grounds other than want of jurisdiction, when a Criminal Court has taken action under s. 476 of the Criminal Procedure Code. The words "as if upon complaint made and recorded under s. 200" introduced in the Code of 1898 were not intended to effect any change in the revisional power of the High Court. *Eranholi Athan v. King-Emperor, I. L. R. 26 Mad. 98*, overruled. OTTUPURA NARAYANAN SOMAYAJIPAD *v.* EMPEROR (1909) . . **I. L. R. 33 Mad. 48**

——— s. 476

See JUDICIAL PROCEEDING. **14 C. W. N. 798**

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*concld.*

——— s. 476—*concld.*

——— "*Court*" *meaning of—Offence brought under the notice of the Court in the course of a judicial proceeding—Proceeding instituted by one munsif for resistance to attachment of moveables in execution—Preliminary inquiry and final order by successor—Legality of order—*"*Judicial proceeding*"*—Execution proceedings.* The word "Court" in s. 476 of the Criminal Procedure Code includes the successor of the Judge before whom the alleged offence was committed, or to whose notice the commission of it was brought in the course of a judicial proceeding. Where, therefore, the judgment-creditor brought to the notice of the Munsif, on the 23rd December 1908, the fact of resistance to the attachment of moveables in execution of his decree, and the Munsif called upon the opposite party to show cause, but his successor, after holding a preliminary inquiry under s. 476 of the Code, ordered their prosecution on 6th October 1909, for offences under ss. 183, 186 and 353 of the Penal Code: *Held,* that the order was not without jurisdiction. Action under s. 476 should, as far as possible, be prompt and expeditious and not unduly protracted. The definition of a "judicial proceeding" in s. 4 (*m*) of the Criminal Procedure Code is not exhaustive. It includes an execution proceeding; and the resistance to the attachment of moveables is, when reported or complained of to the Court, an offence brought under its notice in the course of a judicial proceeding within the meaning of s. 476 of the Code. BAHADUR *v.* ERADATULLAH MALLICK (1910) . . **I. L. R. 37 Calc. 642**
s.c. 14 C. W. N. 799

——— ss. 497, 498.

See BAIL . . **I. L. R. 37 Calc. 439**

——— ss. 514, 516—*Surety-bond to produce accused before Sessions Court—Proceeding for forfeiture if may be taken by a Magistrate.* Where a surety bond has been executed for the appearance of an accused person before a particular Court, under s. 514 of the Criminal Procedure Code, proceedings to have the bond forfeited can be initiated only by that Court. HIRA LAL SHAHU *v.* EMPEROR (1909) . . **14 C. W. N. 259**

——— s. 556—Personally interested—*Magistrate ordering prosecution as president of octroi sub-committee—Jurisdiction.* A Magistrate as the president of the octroi sub-committee of a Municipal Board, ordered the prosecution of the accused, and with the consent of the accused tried the case himself. *Held,* that the Magistrate must be deemed to have been personally interested within the meaning of s. 556 of the Code of Criminal Procedure and was not qualified to try the case of the applicant whose consent could not confer jurisdiction upon him. *Emperor* v. *Mohan Lal, I. L. R. 27 All. 25,* distinguished. *In the matter of the petition of Inayat Husain, All. Weekly Notes (1899) 74,* referred to. EMPEROR *v.* BISHESHAR BHATTACHARYA (1910) . . **I. L. R. 32 All. 635**

CRIMINAL PROCEEDINGS.

——— Legal institution of—*Police report not disclosing nature of information—First information report omitting to state the information received—Information given by police officer to himself—Criminal Procedure Code (Act V of 1898), ss. 154, 173, 190, (1) (b).* A prosecution is not legally instituted under s. 190 (*1*) (*b*) of the Criminal Procedure Code when the police report under s. 173 does not set forth the nature of the information, and the first information report under s. 154 is equally defective in this respect LEE *v.* ADHIKARY (1909) . . . **I. L. R. 37 Calc. 49**

CRIMINAL PROSECUTION.

——— limitation of time for—

See CALCUTTA MUNICIPAL ACT (BENG. III OF 1899), SS. 341 (1), ETC.
I. L. R. 37 Calc. 384

CROSS-APPEAL.

See PRIVY COUNCIL, PRACTICE OF.
I. L. R. 37 Calc. 623

CROSS-EXAMINATION.

——— *Prosecution-witnesses, cross-examination of, after charge—Failure to name, on date of the charge, the witnesses required for cross-examination—Subsequent application before close of the case—Right of cross-examination, continuance of—Waiver—Criminal Procedure Code (Act V of 1898), s. 256.* S. 256 of the Criminal Procedure Code merely lays down that after the plea of the accused is taken he shall be required to state whether he wishes to cross-examine any, and if so which, of the prosecution witnesses whose evidence has been taken, but it does not state at what particular time he is to be asked this question, nor up to what time he has this right. Where, therefore, the accused were asked, on the day the charges were framed, whether they would call any of the prosecution witnesses for cross-examination and did not name any, but made an application to recall some of them for that purpose on the next court day and before the case had closed:—*Held,* that they were entitled to have the prosecution witnesses recalled for the purpose of cross-examination, and that there was no waiver of their right under the section. INDER RAI *v.* C. R. BROWN (1909) . . . **I. L. R. 37 Calc. 236**

CURATORS' ACT (XIX OF 1841).

See SUCCESSION (PROPERTY PROTECTION) ACT (XIX OF 1841).

——— ss. 3, 4 and 14—*Oath's Act (V of 1840)—Death of representative Vatandar—Deceased's widow, representative Vatandar—Death of the widow—Application by the nearest heir of the deceased male Vatandar for possession—Six months, calculation of—Property claimed by right "in succession"—Inquiry upon solemn declaration—Affidavit upon solemn affirmation.* One Kotrappa, representative Vatandar of Deshagat Vatan, died in 1892 His widow Basawa was entered on the Vatan Register as representative Vatandar and she

CURATORS' ACT (XIX OF 1841)—*concld.*

——— **ss. 3, 4 and 14**—*concld.*

held the Vatan property until her death in 1907. Within six months of Basawa's death, Kanappa, who claimed to be the nearest heir of Kotrappa, applied for possession of the property under the Curators' Act (XIX of 1841) and the Judge granted his application. One of the opponents to the application thereupon moved the High Court under the extraordinary jurisdiction contending that (i) under s 14 of the Curators' Act (XIX of 1841) the provisions of the Act could not be put in force because Kotrappa died more than six months before the date of the application, and (ii) in granting the application the Judge did not follow the procedure which is made imperative by the words of s. 3 of the Curators' Act (XIX of 1841), that is, there was no inquiry upon solemn declaration of the complainant (applicant). *Held*, confirming the order, that (i) the decease of the proprietor whose property was claimed by right "in succession" referred to in s 14 of the Curators' Act (XIX of 1841) included the decease of Basawa because she was, between the death of her husband and her own decease, the proprietor of the property claimed All that was to be decided was who should be put into possession of the property in succession to the last deceased holder (ii) The Judge having acted upon the application of the claimant in addition to his affidavit on solemn affirmation the statements in the affidavit furnished sufficient grounds for action under s. 4 of the Curators' Act (XIX of 1841) having regard to the provisions of the Oaths Act (V of 1840) BHIMAPPA *v.* KHANAPPA (1909) . **I. L. R. 34 Bom. 115**

CURRENCY NOTES.

——— **Delivery of halves of**—*Such delivery does not pass the property in the notes—Creditor receiving halves of notes from debtor not entitled to insist on delivery of the other halves.* The delivery by a debtor of halves of currency notes to his creditor with the intention of paying off the debt by remitting the other halves, does not pass the property in the notes to the creditor so as to enable him to claim delivery of the other halves. *Smith* v. *Mundy*, *29 L. J. Q B. 172*, followed. The debtor does not by simply sending the first halves, without anything more, become a trustee or bailee in respect of the other halves of the notes. *Per* ABDUR RAHIM, *J.*—S. 92 of the Indian Contract Act does not apply to money or currency notes, although the definition of goods in s. 76 of the Contract Act is wide enough to cover coins and currency notes. *Per* BAKEWELL, *J.*—The delivery of the half notes to the creditor was only one step towards or preparatory to the actual delivery of the notes, and indicates only an intention to transfer and does not constitute a delivery of the notes. KOTI VENKATA RAMIAH *v.* OFFICIAL ASSIGNEE OF MADRAS (1909) . . **I. L. R. 33 Mad. 196**

CUSTOM.

See HINDU LAW—ADOPTION.
I. L. R. 32 All. 247

CUSTOM—*concld.*

See HINDU LAW—CUSTOM.
I. L. R. 32 All. 363

See HINDU LAW—SUCCESSION.
14 C. W. N. 770

See LANDLORD AND TENANT.
I. L. R. 32 All. 125

See MAHOMEDAN LAW—SUCCESSION.
14 C. W. N. 59

See PRE-EMPTION.
I. L. R. 32 All. 261, 265, 399

See RE-MARRIAGE . **14 C. W. N. 346**

CUSTOMARY RIGHT.

——— **to cut and appropriate trees.**

See INCUMBRANCE **I. L. R. 37 Calc. 322**

D

DAMAGES.

See AGRADANI BRAHMIN.
14 C. W. N. 1005

See GAS COMPANY . **14 C. W. N. 158**

See REVENUE SALE
I. L. R. 37 Calc. 559

——— **assessment of—**

See LIBEL . . **I. L. R. 37 Calc. 760**

——— **claim for, for wrongful attachment—**

See APPEAL . **I. L. R. 37 Calc. 426**

——— **measure of—**

See SALE OF GOODS ACT (56 AND 57 VICT., C 71), SS 45 AND 47.
I. L. R. 34 Bom. 640

——— **Damages for malicious prosecution**—*Onus of proof—State of mind of prosecutor at institution material—Review, setting up new case in—Counsel of prosecutor if competent witness of his good faith* *P* laid a charge of criminal trespass against *C* who was discharged. *C* thereupon sued *P* for malicious prosecution. *P*'s defence was that he instituted the charge on information of his servants whom he believed and in good faith: *Held*, that an *animus injuriæ*, *i.e.*, malice, cannot be inferred from the mere fact that prosecution has failed and the accused has been acquitted. In an action for malicious prosecution the burden of proving malice and the absence of reasonable cause for the prosecution lies on the plaintiff. The crucial point in almost all such actions is the state of mind of the prosecutor at the time he institutes the charge. After the decision of the case in defendant's favour by the Appeal Court, it was urged on behalf of the plaintiff, upon review, that the defendant should be held liable for the acts of his servants: *Held*, that the Court had properly refused to permit a new case to be set up at that stage. A counsel who had advised the pro-

DAMAGES—*concld.*

secutor to institute the charge was a competent witness C. E. VICTOR S COREA *v.* HENRY JOSEPH PEIRI (1909) . . . . **14 C. W. N. 86**

DANDA.

See HINDU LAW—DEBT.
14 C. W. N. 659

DANGEROUS ARTICLE.

See GAS COMPANY . **14 C. W. N. 158**

DAUGHTERS.

——————— *Hindu Law—Mitakshara—Daughters inheriting property from their father—Shares separate and absolute—Tenants-in-common.* In the Bombay Presidency a daughter taking property from her father inherits it as *stridhan* and daughters take their shares separately and absolutely. When the property so inherited is not physically divided, it is held by the daughters as tenants-in-common and not as joint tenants and there is no survivorship between them In cases affecting inheritance the rule is to adhere to the decisions of the Court to which the district from which the case arose is subject. VITHAPPA *v* SAVITRI (1910) . . **I. L. R. 34 Bom. 510**

DAYABHAGA.

See HINDU LAW—AYAUTUKA STRIDHAN.
I. L. R. 37 Calc. 863

DEATH.

——————— **Presumption of death**— *Evidence Act (I of 1872), s 108—Person not heard of for seven years—Time as to when presumption arises—Onus of proof.* When a person is not heard of for seven years, the presumption that arises under s 108 of the Evidence Act is that he is dead at the time when the question is raised and not at some antecedent date. *Fani Bhushan Banerjee* v *Surjya Kanta Ray Chowdhry, I. L. R. 35 Calc 25,* followed. *Moolla Kassim* v. *Moola Abdul Rahim, I L. R. 33 Calc. 173,* referred to. NARKI *v* LAL SAHU (1909) . . **I. L. R. 37 Calc. 103**

DEBTS.

See HINDU LAW—JOINT FAMILY.
I. L. R. 34 Bom. 72

DEBUTTAR ESTATE.

——————— **liability of**—

See PARTIES . **I. L. R. 37 Calc. 229**

——————— **suit against**—

See PARTIES . **I. L. R 37 Calc. 229**

——————— *Suit against Debuttar estate—Expenses necessary for Debuttar estate—Indemnity to estate of former sebait by successor—Liability of Debuttar estate* The parties to this litigation were the descendants of a testator, who by his will dedicated immoveable property to the performance of the worship of certain idols

DEBUTTAR ESTATE—*concld.*

and other pious acts, and provided for the order of succession to the office of sebait among his descendants The suit was instituted on 25th January 1897 by the respondents as executors of a deceased sebait against the appellant, who had been appointed receiver of the debuttar estate, for money which, owing to interference and obstruction by the appellant in the collection of the rents, had not been received by the deceased sebait during his sebaitship, and for expenses he had consequently been obliged to pay out of his private funds to protect the estate, and enable him to perform his obligations as sebait. All the other surviving descendants of the testator were made parties, and the appellant was sued both in his capacity as receiver and in his personal capacity After the expiration of the period of limitation prescribed for the suit, an amendment of the plaint was made by the Court adding to it a prayer that it might be determined who was the sebait, and that the debuttar estate should be represented by the person declared to be entitled to the sebaitship The appellant was found to be so entitled and was impleaded as sebait:—*Held,* affirming the decision of the High Court, that the object of the amendment was merely to determine judicially which of the living descendants of the original testator, all of whom were already parties to the suit, was to be considered sebait It did not alter the character of the suit, nor amount to the addition of a new defendant within the meaning of s 22 of the Limitation Act (XV of 1877), and the suit was therefore not barred. *Held,* also, that the estate of the deceased sebait was entitled to be reimbursed all sums properly expended by him in the preservation of the debuttar estate (as payment of Government revenue and the like), and in defending his position as sebait which was challenged unsuccessfully by the appellant. *Walters* v. *Woodbridge, L. R. 7 Ch. D. 504,* followed. The respondents were also entitled to recover all moneys properly expended by the deceased sebait in performing the obligations imposed upon him by the original testator's will The right of indemnity was incident to the position of a trustee, and the liability in respect of that indemnity was the first charge on the trust estate. PEARY MOHUN MUKERJEE *v.* NARENDRA NATH MUKERJEE (1909)
I. L. R. 37 Calc. 229

DECLARATION.

——————, **suit for**—

See CIVIL PROCEDURE CODE, 1908, S. 9.
I. L. R. 32 All. 527

See CIVIL PROCEDURE CODE (ACT VIII OF 1859), S 15 . **I. L. R. 34 Bom. 676**

See REVENUE JURISDICTION ACT, S 4 (*a*)
I. L. R. 34 Bom. 232

See SPECIFIC RELIEF ACT (I OF 1877), S. 42
I. L. R. 32 All. 316
14 C. W. N. 576.

DECLARATION AND INJUNCTION.

——— suit for—

See JURISDICTION.
I. L. R. 34 Bom. 267

DECLARATION OF RIGHT, SUIT FOR.

——— *Public road—Right of marching in procession with a car—Suit for declaration of right—Injunction restraining interference with the right* Plaintiffs sued on behalf of themselves and of other members of a religious community to have a declaration of their right of marching in procession with a car along a particular public road to certain temples and for an injunction restraining the defendants from interfering with the plaintiffs The defendants contended that the plaintiffs had no right to march along the road The lower Courts dismissed the suit on the ground that the road being public the plaintiffs could not sue unless special damage were shown and proved On second appeal by the plaintiffs: *Held*, reversing the decree and allowing the claim, that the suit was not for removal of a public nuisance but for a declaration of the right of an individual community to use the public road Every member of the public and every sect has a right to use the public streets in a lawful manner and it lies on those who would restrain him or it to show some law or custom having the force of law abrogating the privilege. *Sadgopacharlar* v. *A. Rama Rao, I. L. R 26 Mad. 376.* followed. BASLINGAPPA PARAPPA *v.* DHARMAPPA BASAPPA (1910) . . I. L. R. 34 Bom. 571

DECLARATORY SUIT.

See DECLARATION, SUIT FOR.

See HEREDITARY OFFICES ACT (BOM. III OF 1874), SS. 25, 36.
I. L. R. 34 Bom. 101

See SPECIFIC RELIEF ACT (I OF 1877), S. 42.
14 C. W. N. 576

DECREE.

See CIVIL PROCEDURE CODE, 1882, SS 235, 320 . I. L. R. 34 Bom. 142

See CIVIL PROCEDURE CODE, 1908, S 33, O. XX, RR. 6 AND 7.
I. L. R. 34 Bom. 182

See CIVIL PROCEDURE CODE, 1908, S. 151.
I. L. R. 34 Bom. 135

See EXECUTION OF DECREE.

See FRAUD . . I. L. R. 32 All. 145
14 C. W. N. 695

See LIMITATION ACT, 1877, SCH. II, ART. 179 . . I. L. R. 34 Bom. 189

See LIMITATION ACT, 1877, SCH II, ART. 179, CL. 4 . I. L. R. 34 Bom. 68

DECREE—*contd*

See PENSIONS ACT, 1871, SS. 6, 8, 11.
I. L. R. 34 Bom. 154

See TRANSFER OF PROPERTY ACT, S. 85.
I. L. R. 34 Bom. 354

——— against recorded tenant, effect of—

See LANDLORD AND TENANT
I. L. R. 37 Calc. 75

——— alteration of—

See PRIVY COUNCIL, PRACTICE OF
I. L. R. 37 Calc. 623

——— amendment of—

See PRACTICE . I. L. R. 37 Calc. 649

——— for costs—

See CONTRIBUTION
I. L. R. 32 All. 585

——— modification of after appeal—

See PRACTICE . I. L. R. 37 Calc. 548

——— mortgage of—

See MORTGAGE . I. L. R. 33 Mad. 429

——— revivor of—

See CIVIL PROCEDURE CODE, 1882, S. 244.
14 C. W. N. 357

——— suit on—

See EXECUTOR DE SON TORT, LIABILITY AS.
I. L. R. 33 Mad. 423

1. ALTERATION OR AMENDMENT OF DECREE.

——— *Amendment or alteration of decree—Amendment by Subordinate Judge of his decree after it had been affirmed by the High Court on appeal—Future interest struck out of decree not being in accordance with judgment—Amendment limited to one decree holder of joint decree on appeal to High Court—Civil Procedure Code, 1882, ss 206—209.* A joint and several mortgage decree passed by the court of a Subordinate Judge under s. 88 of the Transfer of Property Act (IV of 1882), which gave future interest on the amount decreed, was affirmed on appeal by the High Court. Subsequently, on the application of the judgment-debtor (the respondent, who had deposited in the court the whole amount due under the decree, including future interest) the Subordinate Judge, notwithstanding objections by the decree-holders, amended his decree by striking out the future interest on the ground that such interest was not in accordance with the judgment on which the decree was based. The decree-holders (the appellant and another who was a transferee of the original decree-holders) made separate applications to the High Court for revision of the Subordinate Judge's order. On the application of the transferee decree-holder, a Bench of the

DECREE—*contd.*

1. ALTERATION OR AMENDMENT OF DECREE—*concld.*

High Court held that the Subordinate Judge had no jurisdiction to amend a decree which had been affirmed by the High Court, and set aside his order, but, only so far as it affected the transferee decree-holder. On the appellant's application the same Bench held that under the circumstances it was not a case in which they ought to exercise their discretionary power of revision. *Held*, by the Judicial Committee, that if the order of amendment was without jurisdiction as altering a decree after it had been amended on appeal, the alteration was equally ineffectual in the appellant's case as in the case of the other decree-holder, and should not have been allowed to stand; and the appeal was therefore decreed. BRIJ NARAIN *v.* TEJBAL BIKRAM BAHADUR (1910)
I. L. R. 32 All. 295

2. CONSTRUCTION OF DECREE

1. ——— **'Decree in suit'**—*Suit by mortgagor for account—Application for redemption decree in appeal—Redemption decree passed by Court in appeal—Decree in the suit—Interpretation—Dekkhan Agriculturists' Relief Act (XVII of 1879), s 15D, cl (3).* *Held*, dismissing the second appeal, that when the decree of the lower Court is reversed or varied in appeal, the decree of the Appellate Court becomes the decree in the suit which is to be executed in execution proceedings. NAVLAJI SARDARMAL *v.* RAMA DHONDI (1909)
I. L. R. 34 Bom. 158

2. ——— **Decree for rent**—*Bengal Tenancy Act (VIII of 1885), ss. 65. 159, 160, 167—Suit for entire rent by person for the time being found to be sole landlord, subsequently held to be a co-sharer—Decree, if rent-decree or money-decree—Purchaser at rent sale, if may annul subordinate interest without annulling superior interest immediately under him—Remand—Transfer of analogous case for trial by one Court.* Where certain persons who were alleged to be only co-sharers, being found by the Court of first instance to be the 16 annas proprietors of certain zamindari properties, took possession of the whole of the properties in execution of their decree pending an appeal to the High Court and were maintained in possession even after the High Court had set aside the decree and until it was decided by the Privy Council agreeing with the High Court that they had only a two-thirds share in the properties: *Held*, that a decree for the entire rent obtained by them during this period in a suit instituted after they had got themselves registered as 16 annas proprietors under the Land Registration Act, was a decree for rent within the meaning of s. 65 of the Bengal Tenancy Act. That they were then the only persons competent to maintain a rent suit, and for the purposes of that suit they completely represented the estate of the landlords. The purchaser of a tenure at a rent sale cannot annul a subordinate interest leaving untouched a superior interest immediately subordinate to the interest

DECREE—*contd.*

2. CONSTRUCTION OF DECREE—*concld.*

purchased by him. MAFIJUDDIN SARDAR *v.* ASHUTOSH CHUCKERBUTTY (1910) **14 C. W. N. 352**

3 EXECUTION OF DECREE.

1. ——— **Decree for rent**—*Suit for redemption—Taking of accounts under the Dekkhan Agriculturists' Relief Act (XVII of 1879)—Result of account showing that mortgagee overpaid himself from rents and profits—Mortgagee's right to execute decree for rent.* In virtue of a decree for four years' rent, passed at a time when the provisions of the Dekkhan Agriculturists' Relief Act did not apply, the plaintiff (mortgagee) became entitled to recover a certain sum from the defendant (mortgagor) After the introduction of the Dekkhan Agriculturists' Relief Act, the latter sued the former for redemption of the mortgage of the land in respect of which the rent note sued on had been passed; on taking accounts in the way directed by the Act, it was found that the plaintiff as mortgagee had overpaid himself from the rents and profits of the land. The plaintiff thereafter applied to execute his decree for rent Both the lower Courts dismissed the application on the ground that the plaintiff had already recovered more than was due to him as mortgagee from the rents and profits of the land. On appeal—*Held*, that the rent decree must be executed as it stood, having regard to the fact that the provisions of the Dekkhan Agriculturists' Relief Act did not apply when it was passed, and that the accounts which were taken for the purposes of the subsequent decree were taken for a special purpose—that is, for enabling the defendant to redeem on favourable terms, and did not entitle him to recover anything from the plaintiff by way of set-off MUGAPPA *v.* MAHAMADSAHEB (1909)
I. L. R. 34 Bom. 260

2. ——— **Legal representative**—*Who ought to be made representative—Person with the best primâ facie title sufficiently represents estate.* A decree-holder who has to apply for execution against the legal representative of the deceased judgment-debtor, may select, from among several rival claimants, as legal representative, the one whom he believes honestly to have the best *primâ facie* title and the representation, in the absence of fraud or collusion, will be sufficient, even though it is subsequently found out some other person is the true legal representative *Khairajmal* v. *Daim, I. L. R. 32 Calc. 296*, explained. RAMASWAMI CHETTIAR *v.* OPPILA MANI CHETTI (1909)
I. L. R. 33 Mad. 6

4. TRANSFER OF DECREE.

——— **Decree, transfer of**—*Transfer takes effect from date of transfer and not from date of its recognition by Court.* Where a decree is transferred by an instrument in writing, such transfer takes effect from the date of such instrument and not from the date of its recognition

DECREE—*concld.*

4. TRANSFER OF DECREE—*concld.*

by the Court *Puthiandi Mammed* v. *Avalil Moidin, I. L. R. 20 Mad. 157*, considered. The transfer of a decree may, in the absence of a contract to the contrary, be regarded as conditional upon the Court granting the transferee permission to execute. The transferee, before repudiating the transfer, is bound to do all that is reasonably necessary to obtain such permission SADAGOPA CHARIAR *v* RAGHUNATHA CHARIAR (1909) **I. L. R. 33 Mad. 62**

DECREE-HOLDER.

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), S 258 . **I. L. R. 34 Bom. 575**

See LIMITATION ACT (XV OF 1877), S 8, SCH. II, ART. 179, EXPL I **I. L. R. 34 Bom. 672**

DEED OF CONVEYANCE.

——— construction of—

See VENDOR AND PURCHASER **I. L. R. 37 Calc. 362**

DEFAMATION.

See ACQUITTAL . **I. L. R. 37 Calc. 604**

See LIBEL . . **I. L. R. 37 Calc. 760**

1. ——— **Subsequent prosecution**—*Acquittal under s. 182 of the Penal Code—Subsequent complaint under s. 500 by the person defamed, in respect of the same statement—Subsequent prosecution not barred—Criminal Procedure Code (Act V of 1898), s. 403.* An acquittal under s. 182 of the Penal Code in respect of false information contained in a petition to the manager of an estate is no bar to a subsequent prosecution for defamation under s. 500 of the Penal Code, on the same statements *Sharbekhan Gohain* v. *Emperor, 10 C W. N. 85*, distinguished. RAM SEBAK LAL *v* MUNESWAR SINGH (1910) . **I. L. R. 37 Calc. 604**

2. ——— **Expulsion from caste**—*Words imputing loss of caste, when actionable—Privilege—Caste usage.* It is open to one member of a caste to refuse to associate with another for what he considers to be an infringement of caste rules; and no Court can call upon him to assign a reason for not associating. It is not however open to one member to call another an outcaste. The caste or the majority of them may expel a member from the caste. The Courts will interfere if he is so expelled without being given a proper opportunity for explanation. Words which impute unworthiness to remain a member of the caste are defamatory and give rise to a cause of action; and where the words used are ambiguous, it must be decided on evidence whether they were intended to bear a libellous meaning Where a libellous communication is made regarding a member of a caste, the mere fact that the person making such communication is a member of the caste, will not of itself suffice to make the communication privileged. COOPOOSAMI CHETTY *v.* DURAISAMI CHETTY (1909) **I. L. R. 33 Mad. 67**

DEFAULT.

——— dismissal of suit for—

See APPEAL . **I. L. R. 37 Calc. 426**

DEFAULTING PROPRIETOR.

See INCUMBRANCE **I. L. R. 37 Calc. 322**

DEFENDANT.

——— changing character of—

See PARTIES . **I. L. R. 37 Calc. 229**

——— duty of—

See PLEADINGS . **I. L. R. 37 Calc 856**

DEFECTIVE INSTALLATION.

See GAS COMPANY . **14 C. W. N. 158**

DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879).

See DECREE . **I. L. R. 34 Bom. 260**

——— **s. 2**—*Agriculturist—Definition—Interpretation.* S. 2 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) gives two definitions of the term "agriculturist," one in cl. 1 and the other in cl. 2. The former applies where a party to a suit is an agriculturist at the time the suit is filed by or against him. The second clause, which gives a special definition of the term "agriculturist" for the purposes of Chapters II, III, IV and VI and s. 69 of the Act, is not exhaustive but is merely inclusive and is intended for a special purpose The decision in *Mahadev Narayan Lokhande* v. *Vinayak Gangadhar Purandhare, I L R 33 Bom 504*, does not lay down the proposition of law that a party to a suit is not entitled to the privileges of an agriculturist under the Dekkhan Agriculturists' Relief Act, 1879, if he was not an agriculturist at the time the liability in question was incurred even though it may be that he was an agriculturist within the meaning of the first clause of s. 2 at the time of the suit. DAMODAR NANDRAM *v* MANURAI (1909) **I. L. R. 34 Bom. 65**

——— **s. 2, cl. 2**—*Amending Act (XXIII of 1881)—Ratnagiri District—Mortgage of 1881—Suit for account—Agriculturist.* The plaintiff whose land and residence was in Ratnagiri District executed a mortgage in the year 1881. The Dekkhan Agriculturists' Relief Act (XVII of 1879) which extended to the districts of Poona, Sátára, Sholápur and Ahmednagar, was not applicable to the Ratnágiri District in the year 1881. In the year 1896 the plaintiff brought a suit for an account of what was due on the mortgage under the provisions of s. 15D of the Act (XVII of 1879) and contended that he was an agriculturist in 1881, that is, when the liability under the mortgage was incurred. *Held*, that the plaintiff could not sue under s. 15D of the Act (XVII of 1879) as he was not an agriculturist within the meaning of the Amending Act (XXIII of 1881). The expression "then defined by law" in s. 2, cl. 2 of the Act (XVII of 1879) relates to the time when any part of

DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879)—*contd.*

——— s. 2—*concld*

the liability was incurred. SHANKAR RAMKRISHNA *v.* KRISHNAJI GANESH (1909) **I. L. R. 34 Bom. 161**

——— s. 12.

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 375 . **I. L. R. 34 Bom. 502**

See CIVIL PROCEDURE CODE, 1908, O. XXIII, r. 3 . **I. L. R. 34 Bom. 502**

See COMPROMISE, MEANING OF. **I. L. R. 34 Bom. 502**

See PLEADER'S AUTHORITY TO COMPROMISE. **I. L. R. 34 Bom. 502**

——— **Compromise by pleader**—*Court's duty to record the compromise and pass decree in its terms—Pleader's compromising without authority from his client—Client to apply to cancel the compromise.* There is nothing in the provisions of s. 12 or in any other section of the Dekkhan Agriculturists' Relief Act, 1879, which expressly deprives the parties to a suit of the power of entering into a compromise and having that compromise recorded under s. 375 of the Civil Procedure Code of 1882 which is the same as order XXIII, rule 3 of the Code of 1908. A compromise means the settlement of a disputed claim. Where a party complains that a compromise effected in his name by his pleader was unauthorised, he must move the Court to cancel all that has been done and to revive the suit. *Basangowda* v. *Churchigirigowda*, *I L R. 34 Bom 408.* followed. PIRAJI *v.* GANAPATI (1910) **I. L. R. 34 Bom. 502**

——— **ss. 12, 13—Retrospective effect**—*Indebtedness existing at the date of the passing of the Act, as well as future indebtedness.* The plaintiff sued to recover from the defendant a certain sum due on a money bond, dated the 17th May 1904 The suit was cognizable by the Court in its Small Cause jurisdiction. The bond sued on was passed in adjustment of an existing debt which itself was the balance due on previous advances. Some of the provisions includings ss. 12 and 13 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) were made applicable to the district on the 15th August 1905 and the present suit was filed on the 26th March 1909 As the several advances which led to the bond were prior in date to the application of the provisions of the Dekkhan Agriculturists' Relief Act (XVII of 1879) to the district, the following question arose :— "Whether s. 13 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) is retrospective so as to apply to the case of transactions entered into before the date of its extension to the district but the suit in respect of which is instituted after that date ?" *Held*, in the affirmative, that s. 13 of the Act is retrospective. Ss. 12 and 13 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) show that it

DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879)—*concld.*

——— ss. 12, 13—*concld.*

was the intention of the Legislature to open up all transactions between the parties having a bearing upon the claim out of which the suit arises from the very commencement. This is one of the means adopted by the Legislature to carry out the intention expressed in the preamble of relieving the agricultural classes from indebtedness existing at the date of the passing of the Act as well as future indebtedness. SIVLAL JETHABHAI *v* BHIKA RAMJAN (1909) . . **I. L. R. 34 Bom. 220**

——— **s. 15D, cl. (3)—Decree in the suit**—*Suit by mortgagor for account—Application for redemption decree in appeal—Redemption decree passed by Court in appeal—Interpretation.* In a suit for an account brought by a mortgagor under the provisions of the Dekkhan Agriculturists' Relief Act (XVII of 1879) the Court found that a sum of ₹100 was due by the plaintiff to the defendant. The defendant appealed. The Appellate Court, on the plaintiff's application that his suit should be treated as one for redemption, passed a decree for redemption on payment of ₹49-2-0 by the plaintiff to the defendant. The defendant preferred a second appeal contending that the words "the decree in the suit" in s. 15D, cl. (*3*) of the Act meant decree in the original Court and not of the Court of Appeal. *Held*, dismissing the second appeal, that when the decree of the lower Court is reversed or varied in appeal, the decree of the Appellate Court becomes the decree in the suit which is to be executed in execution proceedings. NAVLAJI SARDARMAL *v* RAMA DHONDI (1909) . . **I. L. R. 304 Bom. 158**

DELAY.

See BAIL . . **I. L. R. 37 Calc. 412**

See LIMITATION ACT (XV OF 1877), SS. 5 AND 7 . . **I. L. R. 34 Bom. 589**

——— **in investigation of claim.**

See CIVIL PROCEDURE CODE (ACT VIII OF 1859), s. 15 . **I. L. R. 34 Bom. 676**

DELEGATION OF POWER BY CHAIRMAN.

See DEMOLITION OF BUILDING. **I. L. R. 37 Calc. 585**

DELEGATION OF POWERS.

See LOCAL GOVERNMENT, POWERS OF. **I. L. R. 37 Calc. 467**

See PROBATE . . **14 C. W. N. 1068**

DEMOLITION OF BUILDING.

See ACQUIESCENCE. **I. L. R. 37 Calc. 833**

——— *Calcutta Municipal Act (Beng. Act III of 1899), ss. 18, 102 (1) (c), 391, 449—Sanction by District Building Surveyor of additions to contemplated building*

DEMOLITION OF BUILDING—*concld*

—Delegation of power by Chairman—Legality of sanction—Sanction of General Committee—Proceeding under s. 449—Application thereunder to Magistrate, signed for the Chairman by the Secretary to the Corporation and the General Committee—Irregularity. An addition to a contemplated building sanctioned by a District Building Surveyor, to whom the power of sanction has been delegated by the Chairman under s. 18 of the Calcutta Municipal Act, 1899, is a duly authorized erection, and the sanction of the General Committee under s. 391 is not necessary S. 391 applies only to alterations of, and additions to, existing buildings. Where the General Committee approved of the suggestion of the Building Sub-Committee that certain additions to a building were unauthorized, and that an application should be made to the Magistrate under s. 449 of the Act, and directed the Chairman to make it, whereupon an application was made, purporting to come from the Chairman, but signed by the Secretary to the Corporation, who was also Secretary to the General Committee :—*Held*, that the irregularity, if any, was cured by s. 102 (*1*) (*c*) of the Act. KISSORI LAL JAINI *v.* THE CORPORATION OF CALCUTTA (1910)
I. L. R. 37 Calc. 585

DEPORTATION.

See LIBEL . . **I. L. R. 37 Calc. 760**

DEPOSIT.

——— *Contract Act (IX of 1872), ss. 43, 70—Deposit by co-tenant not made party in co-sharer landlord's suit for share of rent to set aside sale—Civil Procedure Code (Act XIV of 1882), s. 310A—Sale set aside—Liability of other co-tenants to contribute* A co-sharer landlord brought a suit for his share of the rent against all except one of several co-tenants, and sold the holding in execution of the decree obtained therein. A purchaser of the interest of the remaining co-tenant applied under s 310A, Civil Procedure Code, and the sale was set aside on his making the required deposit : *Held*, *per* JENKINS, *C J*, that on the findings of fact of the lower Appellate Court, that the plaintiff did not intend to make the deposit gratuitously and that the defendants enjoyed the benefits thereof and the deposit having moreover been made lawfully in that it was done with the approval of the Court, s. 70 of the Contract Act applied That the plaintiff was entitled to sue the defendants in contribution but only in respect of their share of the decretal debt and not in respect of the penalty of 5 per cent. on the purchase-money payable under s. 310A, Civil Procedure Code. *Per* DOSS, *J.*—That the plaintiff was entitled to recover the defendant's share of the decretal debt, not under s. 70, as being a co-tenant, he was himself liable to the landlord for the whole debt, but under s. 43, his obligation to pay remaining notwithstanding that the decree was passed against the other co-tenants only. That the sale not having been confirmed and the sale-proceeds withdrawn when the deposit was made, the decree

DEPOSIT—*concld.*

remained undischarged and was only satisfied when the money deposited by plaintiff was withdrawn. MOHENDRA GHOSHAL *v* BHUBAN MARDANA (1910)
14 C. W. N. 945

DEPOSIT IN COURT.

See MORTGAGE . **I. L. R. 37 Calc. 282**

DEPOSIT OF TITLE-DEEDS.

See TITLE . . . **I. L. R. 37 Calc. 239**

DEPOSITION.

——— **corroboration of—**

See EVIDENCE ACT (I OF 1872), SS 21, 157
I. L. R. 34 Bom. 599

——— **under compulsion—**

See FALSE EVIDENCE.
I. L. R. 37 Calc. 878

——— *Criminal Procedure Code, s. 360—Deposition of witnesses to be read out to them in presence of accused.* The disregard at trials in the mofussil of the provision of s. 360 of the Criminal Procedure Code which requires that deposition of a witness should be read over to him in the presence of the accused or his pleader, condemned. JYOTISH CHANDRA MUKHERJEE *v.* EMPEROR (1909) . . . **14 C. W. N. 82**

DIRECTION.

See THIRD PARTY.
I. L. R. 34 Bom. 423

DIRHAM.

See MAHOMEDAN LAW—DOWER.
I. L. R. 32 All. 167

DISCOVERY.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. 11, R. 14 . **14 C. W. N. 147**

DISHONEST INTENTION.

See THEFT . . **14 C. W. N. 936**

DISMISSAL OF SUIT FOR DEFAULT.

See CIVIL PROCEDURE CODE, 1882, S 311
14 C. W. N. 573

——— **improper procedure in—**

See APPEAL . **I. L. R. 37 Calc. 426**

DISOBEDIENCE OF ORDER.

See JOINT PENALTY.
I. L. R. 37 Calc. 895

See SANCTION FOR PROSECUTION
14 C. W. N. 234

DISOBEDIENCE OF REQUISITION.

See CALCUTTA MUNICIPAL ACT (BENG. III OF 1899), SS. 341 (*1*), ETC.
I. L. R. 37 Calc. 384

DISPOSSESSION.

See SPECIFIC RELIEF ACT, s 9.
14 C. W. N. 403

DISPUTE CONCERNING LAND.

1. ——— *Attachment of subject of dispute—Order of Settlement Court in a proceeding between the same parties and relating to the attached lands—Effect of such order—Release of attachment by Magistrate—Criminal Procedure Code (Act V of 1898), s 146—Bengal Survey Act (Beng. Act V of 1875), s. 41.* An order of the Survey and Settlement Courts, under the Bengal Survey Act, 1875, s. 41, is a determination by a competent Court of the rights of the parties entitled to possession of the land within the meaning of s. 146 of the Criminal Procedure Code. Where the Magistrate attached certain lands under s 146 of the Code, and in a proceeding under s. 41 of the Bengal Survey Act, 1875, between the same parties, the same lands were found to be in the possession of the petitioner:—*Held*, that the Magistrate was bound to follow such order and to release the lands from attachment. AMBLER *v.* SAMI AHMED (1910) . . . **I. L. R. 37 Calc. 331**

2. ——— *Tenant interested in the subject of dispute—Addition of the tenant to the proceedings to show that there is no dispute likely to cause a breach of the peace—Criminal Procedure Code (Act V of 1898), s. 145, cl. (5).* A person claiming to be interested in the subject of dispute as a tenant, who was not required to attend as a party, should be heard under s. 145 (5), of the Criminal Procedure Code in order to show that no dispute likely to cause a breach of the peace exists. HARAN MANDAL *v.* MOHIM CHANDRA PRAMANICK (1910)
I. L. R. 37 Calc 285

DISTRICT BUILDING-SURVEYOR.

——— **sanction by—**

See DEMOLITION OF BUILDING.
I. L. R. 37 Calc. 585

DISTRICT JUDGE.

See SANCTION FOR PROSECUTION.
I. L. R. 37 Calc. 13

DISTRICT MAGISTRATE.

——— **—power of, to cancel bond—**

See MAGISTRATE, POWERS OF.
I. L. R. 37 Calc. 72

DIVISION BENCH.

——— **jurisdiction of—**

See PRACTICE . **I. L. R. 37 Calc. 173**

DIVORCE.

See DIVORCE ACT (IV OF 1869), S. 3.
I. L. R. 32 All. 203

——— *Attachment before judgment—Divorce Act (IV of 1869), ss. 7, 45—Civil Procedure Code (Act V of 1908), o XXXVIII, rr. 5, 6—Relief* An order for attachment before judgment will not be made in divorce proceedings. Attachment before judgment being a matter of relief and not of procedure, is governed by s. 7 of the Divorce Act and the principles and rules of the English Divorce Court and not by s 45 of the Divorce Act and the Civil Procedure Code. Order XXXVIII, rules 5 and 6, have no application in divorce proceedings. PHILLIPS *v* PHILLIPS (1910)
I. L. R. 37 Calc. 613

DIVORCE ACT (IV OF 1869).

——— **s. 3—Residence**—*Divorce—Jurisdiction—"Reside" Held*, that a mere temporary sojourn in a place, there being no intention of remaining there, will not amount to residence in that place within the meaning of s. 3 of the Indian Divorce Act, 1869, so as to give jurisdiction under the Act to the court within the local limits of whose jurisdiction such place is situated FLOWERS *v.* FLOWERS (1910) . **I. L. R. 32 All. 203**

——— **ss. 7, 45.**

See DIVORCE . **I. L. R. 37 Calc. 613**

DOCUMENT.

——— **execution of—**

See ATTESTATION **I. L. R. 37 Calc. 526**

——— **granting exemption from assessment of rent.**

See TRANSFER OF PROPERTY ACT, SS. 55, 123 . . **I. L. R. 34 Bom. 287**

DOCUMENTS, INSPECTION OF.

——— *Caste—Trustee of caste funds—Extent of right to inspect documents—Demand and refusal—Jurisdiction of Civil Courts in caste questions—Application of Indian Trusts Act (II of 1882), ss. 5 and 6, to creation of trusts of caste funds—Civil Procedure Code (Act V of 1908), s 151.* As a result of dissensions in a Hindu caste a suit was filed by the plaintiff, a trustee of certain caste funds and member of the Managing Committee, against the defendant, a co-trustee and the President of that Committee. The plaintiff prayed for a declaration that he had the right to inspect all books and documents of the Mahajan Managing Committee, Sub-Committee and Trustees, and for an injunction restraining the defendant from interfering with him in the exercise of such right. The only two documents about which there was any real controversy were the minutes of the Sub-Committee and the correspondence-file of the Mahajan. *Held*, that as trustee of the Derasar and Sadharan funds, the plaintiff had no right, either in law or by virtue of any caste rules, to the roving inspection claimed. *Bank of Bombay* v. *Suleman*, *I. L. R. 32 Bom. 466, 474*, referred to *Held*, further, that the Mahajan fund of this caste being a purely secular fund the Indian Trust Act applied, and the plaintiff could not claim to have been made

DOCUMENTS INSPECTION OF—*concld*

a trustee of that fund merely by virtue of a caste resolution and his own letter of acceptance *Held*, further, on the evidence, that there has been no express demand addressed by the plaintiff to the proper quarter, and no refusal by the defendant such as would be necessary to enable a suit of this character to succeed. *Held*, further, that where rights to property are not involved, all matters of internal management must be left to the decision of the caste. The question in dispute was in reality a question between the caste and a section, apparently a small section, of the caste led by the plaintiff, and as such it was outside the Court's jurisdiction in accordance with the decision in *Nemchand* v. *Saraichand, I. L. R 5 Bom 84 note Lalji Shamji* v. *Walji Wardhman, I. L. R. 19 Bom 507*, referred to and distinguished. *Held*, lastly, that when according to well established principles certain questions have been removed from the jurisdiction of the Court, they cannot be brought within the jurisdiction under s. 151 of the Civil Procedure Code (Act V of 1908) JETHABHAI NARSEY v CHAPSEY COOVERJI (1909) . . **I. L. R. 34 Bom. 467**

DOMICILE.

See GUARDIANS AND WARDS ACT, 1890, s 9
I. L. R. 34 Bom. 121

DOWR.

See MAHOMEDAN LAW—DOWER
I. L. R. 32 All. 167

See MAHOMEDAN LAW—MARRIAGE.
I. L. R. 32 All. 477

See MAHOMEDAN LAW—WIDOW
I. L. R. 32 All. 551, 563

See SUCCESSION CERTIFICATE ACT (VII OF 1889), SS. 4 AND 7.
I. L. R. 32 All. 335

"DWIRAGAMAN" CEREMONY.

——— **gift at—**

See HINDU LAW—GIFT.
I. L. R. 37 Calc. 1

E

EASEMENT.

——— *Suit relating to easement—Servient owners, if all must be parties.* A decree based on an easement cannot be passed when all the servient owners are not parties. MADAN MOHAN CHATTOPADHYA *v.* AKSHOY KUMAR BARUR. (1909) **14 C. W. N. 15**

EASEMENTS ACT (V OF 1882).

——— **s. 13—Channel**—*Right to channel cut subsequent to severance of tenements* Land belonging to Government was granted to *A*, who dug and used a channel across other Government land. The lands across which the channel was dug was subsequently granted to *B*. *B* thereupon filled up the

EASEMENTS ACT (V OF 1882)—*concld.*

——— **s. 13**—*concld.*

channel, which had been in existence for 16 years. In a suit by *A* to establish his right to such channel:—*Held*, that *A* had no claim to an apparent and continuous easement under s 13 of the Easements Act, and had not acquired a prescriptive right by user of the channel KUTTATH KRISHNAN *v.* CHATHU MENON (1909)
I. L. R 33 Mad. 207

——— **ss. 13, 28, 33—Light and Air**—*Right of way not apparent and continuous easement—Air and light, extent of prescriptive right acquired in—When action for compensation for obstruction will lie—What relief appropriate to be granted.* A right of way is not an apparent and continuous easement within the meaning of s. 13 of the Indian Easements Act. The extent of prescriptive right to the passage of light or air to a certain window is the quantity of light or air which has been accustomed to enter that opening during the prescriptive period under s. 28 of the Easements Act; no invasion of such right will give a right to compensation unless substantial damage is caused within the meaning of s. 33 of the Act. Where the injury caused by the invasion of the right is not small and a mandatory injunction will not cause serious loss or damage to the defendant, an injunction and not merely compensation will be the appropriate relief to be granted The fact that the owner of the dominant tenement has acquired light from other sources will not justify an interference with the prescriptive right acquired by him. *Dyers Company* v. *King, L R. 9 Eq. 438, 442*, referred to. ESA ABBAS SAIT *v* JACOB HAROON SAIT (1909)
I. L. R. 33 Mad. 327

EASTERN BENGAL AND ASSAM DISORDERLY HOUSES ACT (II OF 1907).

——— **ss. 2 to 6.**

See HIGH COURT, JURISDICTION OF
I. L. R. 37 Calc. 287

EJECTMENT.

See LANDLORD AND TENANT.
14. C. W. N. 339

See PASTURE LANDS . **14 C. W. N. 372**

——— **suit for—**

See LAMBARDAR . **I. L. R. 37 Calc. 694**

See SARANJAM . **I. L. R. 34 Bom. 329**

ELECTION.

See MUNICIPAL COUNCILLORS.
I. L. R. 34 Bom. 659

EMIGRATION.

——— **Unlawful recruitment**—*Assam Labour and Emigration Act (VI of 1901), s. 164—"Emigrate," meaning of—Inducement to go from a place in British India to Fiji—Subsequent inducement at another place to proceed to Sylhet—*

EMIGRATION—*concld.*

Locus delicti—Jurisdiction of Criminal Court—Criminal Procedure Code (Act V of 1898), s. 177. A recruiter, who induces a person at Cawnpore to go to Fiji, but on the way takes him to a cooly depôt at Arrah and induces him to proceed to Sylhet, in contravention of the Assam Labour and Emigration Act, commits no offence under s 164 of Act VI of 1901 at Cawnpore, but only at Arrah, and a Magistrate of the latter place has jurisdiction to try such offence. FAIZ ALI *v.* EMPEROR (1909) **I. L. R. 37 Calc. 27**

ENCROACHMENT.

——— **on public street.**

See PROSECUTION. **I. L. R. 37 Calc. 545**

——— *Bengal Local Self-government Act (Beng Act III of 1885), s. 140—Infringement of bye-law—Erection of fence on the slope and edge of a road without impeding the passage along it—Continuing Offence—Daily Fine.* Where a bye-law passed by the District Board prohibited encroachment on any part of a road maintained by it, or its slopes or side-ditches, by the placing of fences thereon: *Held*, that the erection of a fence along the slope and the edge of such road, without impeding the passage over it, is an infringement of the bye-law; though the Board has no proprietary right in the road, or in the land on which its slopes or side-ditches stand. A sentence of a daily fine in anticipation, in the case of a continuing offence which may be committed after the date of the proceeding in which it was passed, is illegal NILMANI GHATAK *v* EMPEROR (1910) **I. L. R. 37 Calc. 671**

ENDORSEMENT OF PAYMENT.

See MORTGAGE . **I. L. R. 37 Calc. 589**

ENDOWMENT.

See HINDU LAW—SUCCESSION. **I. L. R. 32 All. 461**

See MAHOMEDAN LAW **I. L. R. 37 Calc. 263**

ENHANCEMENT OF RENT.

See LANDLORD AND TENANT. **I. L. R. 37 Calc. 449, 610, 742**

EQUITABLE SET-OFF.

See CONTRACT . **I. L. R. 37 Calc. 334**

EQUITY OF REDEMPTION.

See TITLE . **I. L. R. 37 Calc. 239**

——— **clog on—**

See MORTGAGE . **I. L. R. 32 All. 651**

ESCAPE FROM LAWFUL CUSTODY.

See PENAL CODE, s. 225B. **I. L. R. 32 All. 116**

ESTATES PARTITION ACT (BENG. VIII OF 1876).

——— **ss. 7, 111, 149.**

See TITLE, SUIT FOR. **I. L. R. 37 Calc. 662**

ESTATES PARTITION ACT (BENG. V OF 1897).

——— **s. 7**—*Previous partition, when a bar to fresh partition—Actual joint possession of parts of the property at the time when partition is applied for, if enables a partition to be made although there had been a previous partition—Civil Court, jurisdiction of to declare estate unfit for partition by Collector.* S. 7 of the Estates Partition Act contemplates a formal division of the lands of an estate by metes and bounds agreed to by all co-owners and a possession of separate lands held in severalty by each such co-owner Where it was found that there had been a previous arrangement by which the co-sharers had possession of different lands but there had not been a complete partition by metes and bounds and an *ijmali* share was retained and some co-owners who were ignored in that partition subsequently obtained an *ijmali* share in each of the mouzahs: *Held*, that there was no complete partition as contemplated by s. 7 of the Estates Partition Act such as would bar partition under the Act. *Semble*: If a complete partition is once effected, no subsequent partition under the Act can take place except on a joint application by all the proprietors, even though after such partition each of the separate parcels becomes, or some of them become, jointly vested in more proprietors than one so that it might be said that there was joint ownership in the property at the time of application under the Act. Where there were several co-sharers holding *ijmali* shares in all the mouzahs and the lower Court had declared that the land was not fit to be partitioned and thereby barred all future partitions: *Held*, that the order was wrong and that the *ijmali* shareholders might, if they chose, ask for a partition of the entire taluk. *Quære*: Whether a Civil Court has jurisdiction to prohibit absolutely a partition to be made by the revenue authorities. TAJAMAL ALI *v.* MUSSUD ALI (1910) . **14 C. W. N. 632**

ESTOPPEL.

See CIVIL PROCEDURE CODE, 1882, s 13. **I. L. R. 33 Mad. 459**

See LANDLORD AND TENANT. **I. L. R. 32 All. 213**

See PRINCIPAL AND AGENT. **14 C. W. N. 381**

——— *Saranjam—Inam—Miras (permanent tenancy)—Denial of Saranjamdar's title—Attornment to successive Saranjamdars.* In an ejectment suit brought by an Inamdar against persons claiming to hold as mirasi or permanent tenants, it was conceded that the inam rights in the land in suit appertained to a saranjam held on political tenure and that the present incumbent of the saranjam was the plaintiff. The defendants

ESTOPPEL—*concld.*

resisted the plaintiff's claim to eject them on the ground that the inam rights were merely the right to receive the royal share of the revenue and that the proprietary rights in the soil were, prior to the date of the grant, vested in the grantee of the inam had descended to his heirs independently of the inam and furnished the leasehold or mirasi right *Held*, that the defendant's contention involved the denial of the title to the reversionary rights in the lands in the defendants' occupation of the successive saranjamdars approved by Government. The defendants had, however, been continuously paying rent for their holding to the successive saranjamdars including the plaintiff They were thus estopped by attornment from disputing the plaintiff's title. *Vasudev Dajı* v. *Babaji Ranu*, *8 Bom. H. C. R (A. C.) 175*, and *Doe dem. Marlow* v. *Wiggins*, *4 Q B 367*, referred to. TRIMBAK RAMCHANDRA *v.* SHEKH GULAM ZILANI (1909)
I. L. R. 34 Bom. 329

ESTOPPEL BY CONDUCT.

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), S. 258 . **I. L. R. 34 Bom. 575**

EUROPEAN BRITISH SUBJECT.

——— **rights of—**

See JURY, RIGHT OF TRIAL BY.
I. L. R. 37 Calc. 467

EVIDENCE.

See ADOPTION . **I. L. R. 32 All. 104**

See AGRA TENANCY ACT (II OF 1901), S. 201 (?) . **I. L. R. 32 All. 427**

See HINDU LAW—CUSTOM
I. L. R. 32 All. 363

See LANDLORD AND TENANT.
I. L. R. 32 All. 125

See LEASE . **I L. R. 37 Calc. 293**

See MAHOMEDAN LAW.
I. L. R. 32 All. 345

See PENAL CODE (ACT XLV OF 1860), S. 76.
I. L. R. 32 All. 451

See PROVINCIAL INSOLVENCY ACT (III OF 1907), S. 4? (2) **I. L. R. 32 All. 547**

——— **admissibility of—**

See EVIDENCE ACT (I OF 1872), SS. 21, 157 . **I. L. R 34 Bom. 599**

——— **Proof of adoption**—*Presumption from non-appearance of plaintiff in Court as witness —Practice for each litigant to cause his opponent to be cited as a witness—Non-production of account books with entries made at ceremony of adoption—Unsatisfactory conduct of case.* In this case, in which the only issue was whether an alleged adoption had taken place or not, the onus being on the

EVIDENCE—*concld.*

plaintiff (respondent) to prove that he had been adopted, the Judicial Committee held that he had not discharged the onus upon him and reversed the decision of the High Court mainly on the ground that due weight did not appear to have been given to the conduct of the plaintiff, the improbability and inconsistency of the story told on his behalf, his absence from the witness box, and the non-production of all books and documents Having regard to the well known and often proved habits of the Indian people with regard to the keeping of accounts recording their most minute transactions, the non-production of any books in which anything connected with this ceremony (of adoption) was entered covered the plaintiff's case with suspicion. No effort was shown to have been made by either side to procure their production; no search for them or loss of them was proved; no explanation why they were not forthcoming. The species of advocacy tolerated by the Courts of Law in the United Provinces of India in which the unworthy effort of the advocate on each side is to force his opponent to produce his own client in order that he himself may have the opportunity of cross-examining that client, with the result that should the opponent refuse to be led into this trap, the parties, the principal witnesses, are never examined at all, condemned by the Judicial Committee as a vicious practice unworthy of a high toned or reputable system of advocacy, as embarrassing and perplexing judicial investigation, and, it was to be feared, too often enabling fraud, falsehood, or chicane to baffle justice. *Quære*. Whether the existence of such a system formed a ground for not drawing the ordinary presumption to the detriment of the plaintiff from his failure to go into the witness box and support his case. *Semble:* It does not. LAL KUNWAR *v.* CHIRANJI LAL (1909)
I. L. R. 32 All. 104

——— **Documentary evidence**—*Reversal by Appellate Court of decision as to genuineness of documents—Evidence taken on commission so that first Court had not the usual advantage of seeing and hearing witnesses—Suit by head of family and owner of impartible raj to recover immoveable property reverting to raj on failure of objects for which it was given as maintenance.* In this appeal from the decision of the High Court in *Pateshari Partab Narain Singh* v. *Rudra Narain*, *I. L. R. 26 All. 523*, their Lordships of the Judicial Committee agreed with the view of the High Court that the plaintiff (respondent) was entitled to succeed so far as his claim was based on the *sipurdnama*, which, if genuine, was decisive of the case; and without dissenting from their opinion on the point of law as to the competency of the Appeallate Court under the circumstances to add a party after the period of limitation for the suit had expired, affirmed the finding as to the genuineness of the *sipurdnama* and *warasatnama*, and dismissed the appeal. IMDAD AHMAD *v.* PATESHRI PARTAP NARAIN SINGH (1910) . . . **I. L. R. 32 All. 241**

EVIDENCE ACT (I OF 1872).

——— **s. 4.**

See AGRA TENANCY ACT (II OF 1901), S. 201 (3) . **I. L. R. 32 All. 427**

——— **s. 11.**

See SECURITY FOR GOOD BEHAVIOUR. **I. L. R. 37 Calc. 91**

——— **ss. 21, 25, 29, 47, 67, 73.**

See JURY, RIGHT OF TRIAL BY. **I L. R. 37 Calc. 467**

——— **ss. 21, 157**—*Criminal Procedure Code (Act V of 1898), ss 162, 288—Evidence—Admissibility of evidence—Statements made by witness to Police and Panch—Statements made by the witness as accused before Committing Magistrate—Witness deposing to different story before Sessions Court—Corroboration of the deposition before the Committing Magistrate by statements made before the Police and the Panch—Investigating Police Officer—Deposition of, as to statements made by witnesses to him—Examination-in-chief—Practice and procedure* During the trial of an accused person, the Sessions Judge admitted into evidence and used against the accused the following statements: (1) statements made by a witness to the Police implicating the accused, (2) the same witness's statement to the Panch, (3) his statement as an accused person made before a Magistrate, and (4) statements made by the co-accused to the Police. The witness, when he was examined before the Committing Magistrate, gave a consistent story, but he deposed to quite a different version when he was examined in the Sessions Court The learned Judge disbelieved the changed story, and he used the witness's statements to the Police and his statements as an accused person and his statements to the Panch, by way of corroboration of what the witness had stated to the Committing Magistrate The accused was convicted and sentenced On appeal.—*Held*, (i) that it was an error to admit statements Nos. 1 and 2 for the purpose of corroborating statement No 3, for only the statements of witnesses made to the trying Court can be corroborated in the manner contemplated by s 157 of the Indian Evidence Act, 1872 Previous statements might be used to corroborate or contradict statements made at the trial; not to corroborate statements made prior to the trial. (ii) That statements No. 2 were altogether inadmissible as evidence of the accused's guilt, for they could at most be regarded as admissions by the co-accused which could possibly be used against himself, but could not be proved and used against the accused. The Investigating Police Officer ought not to be allowed to depose in examination-in-chief to what the witnesses stated to him. It opens up an undesirably wide field for cross-examination and leads to the attention of the Court being diverted and distracted from the true issues. Moreover, it is contrary to the plain intention of s. 162 of the Code of Criminal Procedure which is that such statements should be used, if at all, on behalf of and not against the person under trial. EMPEROR *v* AKRAR BADOO (1910) **I. L. R. 34 Bom. 599**

EVIDENCE ACT (I OF 1872)—*contd.*

——— **s. 21**—*concld.*

——— **s. 24.**

See CONFESSION . **I. L. R. 37 Calc. 735**

——— **s. 30**—*Confession of co-accused not to be acted upon without corroboration—Misdirection to jury.* The confession of a co-accused is on an even lower footing than the evidence of an accomplice and a conviction based on such a confession alone is bad in law. S 30 of the Evidence Act only provides that such a confession is to be an element in the consideration of all the facts of the case, but it does not do away with the necessity for other evidence It is the duty of the Judge, when there is no other evidence than the confession of a co-accused to direct the jury accordingly and tell them to acquit the accused; and his omission to do so is a misdirection which will vitiate a conviction. GIDDIGADU *v* EMPEROR (1909) **I. L. R. 33 Mad. 46**

——— **ss. 55, 57, 78 (2).**

See LIBEL . **I. L R. 37 Calc. 760**

1. ——— **s. 91—Search list**—*Search-list does not exclude oral evidence of matters stated therein—Confession not recorded in compliance with orders of Government—Such confession admissible if voluntary.* S. 91 of the Evidence Act has no application when the writing is not evidence of the matter reduced to writing A search-list is not evidence of the matter stated therein and it does not therefore exclude oral evidence of such matter G. O, No. 2883, Judicial, paragraph 5 (dated 17th December 1887), directs that no Magistrate may record any confession or statement under s 167, Criminal Procedure Code, until he has first recorded in writing his reasons for believing that the accused is going to make such statement voluntarily: *Held*, that non-compliance with an order of Government as to the formalities to be observed in recording confessions, does not render a confession inadmissible in evidence The Court has to determine whether such confession was voluntary or not PUBLIC PROSECUTOR *v.* SARABU CHENNAYYA (1899) **I. L. R. 33 Mad. 413**

2. ——— *Oral evidence admissible to prove what took place at time of search.* Where a search has been conducted under the Criminal Procedure Code, the search-list is not the only evidence admissible as to the matters dealt with therein. S 91 of the Evidence Act does not exclude oral evidence of what took place at the time of search. *Abdul Khadir* v. *Queen Empress, 2 Weir Cr. R 515*, dissented from. *Public Prosecutor* v *Sarabu Chennayya, I. L. R 33 Mad. 413*, followed ELAMATHAN *v.* EMPEROR (1910) **I. L. R. 33 Mad. 416**

EVIDENCE ACT (I OF 1872)—*contd.*

——— **s. 92—Sale-deed**—*Written agreement—Contemporaneous oral agreement to treat it as mortgage—Absence of fraud, misrepresentation, etc.—Oral agreement cannot be pleaded.* Where parties enter into a sale-deed with a contemporaneous oral agreement to treat it as a mortgage, it is not open to either of them to plead the oral agreement in absence of fraud, misrepresentation or failure of consideration or the like reason rendering the sale void. SANGIRA MALAPPA *v* RAMAPPA (1909) . . . **I. L. R. 34 Bom. 59**

——— **s. 93—Hand-note**—*Evidence Act (I of 1872), ss. 93, 94, 95, 96—Stipulation to pay interest—Interest whether monthly or annual, extrinsic evidence to prove.* A hand-note contained a stipulation to pay interest at 2½ per cent. but did not mention whether that interest was to be calculated annually or monthly or otherwise : *Held*, that evidence was properly admitted to show that the words meant that interest should be calculated monthly. *Mahomed Sumsoddeen* **v.** *Moonshee Abdool Huq, (1864) W. R 379*, followed. MONMOTHA NATH CHAUDHURY *v.* NOBIN CHANDRA SANYAL (1910) **14 C. W. N. 1100**

——— **s. 105.**

See PENAL CODE, s 76.
I. L. R. 32 All 451

——— **s. 108.**

See DEATH, PRESUMPTION OF.
I. L. R. 37 Calc. 103

——— **s. 115.**

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 258 . **I. L. R. 34 Bom 575**

——— **Adjustment outside the Court**—*Civil Procedure Code (Act XIV of 1882), s. 258—Adjustment or payment of decree—Decree-holder acting upon the adjustment and receiving money—Application to execute the decree—Estoppel by conduct—Indian Evidence Act (I of 1872), s 115.* A decree was adjusted outside the Court. No notice was given to the Court of the adjustment ; and its sanction was not taken under s 258 of the Civil Procedure Code of 1882. The decree-holder received payment under the adjustment and after some time applied to execute the decree irrespective of the adjustment. The judgment-debtor pleaded the adjustment as a bar to execution. The decree-holder contended that the adjustment not having been certified to the Court, it could not recognise it as valid but was bound to execute the decree. The Subordinate Judge overruled the contention holding that as the decree-holder had, after the adjustment, received for several years moneys under it, he was estopped by conduct under s 115 of the Indian Evidence Act, 1872. *Held*, that the view of the Subordinate Judge gave the go-by to the plain language of the last paragraph of s. 258 of the Civil Procedure Code, 1882. There is no room left by the law for the operation of the law of estoppel in the matter of execution. The last paragraph of s 258 enacts a special law for a special purpose whereas s 115 of the Indian Evidence Act, 1872, relates to the general law of estoppel ; and the principal is that a special law overrides for its purposes the general law. *Per* CHANDAVARKAR, *J*—Fraudulent executions of decrees must be discouraged by the Courts whenever they come to their notice, and decree-holders, who enter freely into adjustments outside the Court and do not certify them as required by law, but fraudulently apply for execution, ignoring the adjustment, should be dealt with under the criminal law *Per* HEATON, *J*—The purpose of s. 258 of the Civil Procedure Code, 1882, is that the Court shall have complete knowledge of all that is done towards the satisfaction of its decree TRIMBAK RAMKRISHNA *v.* HARI LAXMAN (1910) **I L. R. 34 Bom. 575**

EVIDENCE ACT (I OF 1872—*concld.*

——— **s. 115**—*concld.*

——— **s. 132, proviso.**

See FALSE EVIDENCE.
I. L. R. 37 Calc. 878

——— **s. 167**—*Trial by Jury—Misdirection, improper admission of evidence whether amounts to—Counter-information—Criminal Procedure Code (Act V of 1898), s 423—Powers of the High Court in a jury trial.* Where in his charge to the jury, the Sessions Judge referred to a certain counter-information lodged by one of the accused as if it contained an admission by all the accused of their presence at the scene of occurrence : *Held*, that the counter-information was wrongly admitted as evidence against the accused other than the accused who lodged it. That the observation of the Sessions Judge on the counter-information amounted to a misdirection only in so far as a wrong admission of evidence implies a misdirection ; and that notwithstanding such a misdirection the High Court can deal with the case in accordance with the provisions of s. 167, Indian Evidence Act. But on the general principle enunciated in the case of *Sadhu Sheikh* v. *Emperor, 4 C. W. N. 576*, the case of the accused against whom the counter-information was wrongly admitted was sent back to be retried by the Sessions Judge and a Jury. SHEIKH HAZIR *v.* EMPEROR (1910) **14 C. W. N. 493**

EVIDENCE OF ASSOCIATION.

——— **admissibility of—**

See SECURITY FOR GOOD BEHAVIOUR.
I. L. R. 37 Calc. 91

EVIDENCE OF BAD CHARACTER.

See LIBEL . **I. L. R. 37 Calc. 760**

EVIDENCE ON OATH.

See "JUDICIAL PROCEEDING."
I. L. R. 37 Calc. 52

EXAMINATION OF WITNESSES.

——— de novo—

See MAGISTRATE, TRANSFER OF
I L. R. 37 Calc. 812

EXECUTING COURT.

——— jurisdiction of—

See EXECUTION OF DECREE
I. L. R. 37 Calc. 574

EXECUTION.

See CRIMINAL PROCEDURE CODE, s 145.
14 C. W. N. 78

See LIMITATION ACT, 1877, SCH II, ART 179, CL (4) . **I. L. R. 34 Bom. 68**

See MORTGAGE . **I. L. R. 37 Calc. 897**

See TRANSFER OF PROPERTY ACT, S 85.
I. L. R. 34 Bom. 354

——— **Decree for rent**—*Suit for redemption—Taking of accounts under the Dekkhan Agriculturists' Relief Act (XVII of 1879)—Result of account showing that mortgagee overpaid himself from rents and profits—Mortgagees' right to execute decree for rent.* In virtue of a decree for four years' rent, passed at a time when the provisions of the Dekkhan Agriculturists' Relief Act did not apply, the plaintiff (mortgagee) became entitled to recover a certain sum from the defendant (mortgagor). After the introduction of the Dekkhan Agriculturists' Relief Act, the latter sued the former for redemption of the mortgage of the land in respect of which the rent-note sued on had been passed; on taking accounts in the way directed by the Act, it was found that the plaintiff as mortgagee had overpaid himself from the rents and profits of the land. The plaintiff thereafter applied to execute his decree for rent. Both the lower Courts dismissed the application on the ground that the plaintiff had already recovered more than was due to him as mortgagee from the rents and profits of the land. On appeal: *Held*, that the rent decree must be executed as it stood, having regard to the fact that the provisions of the Dekkhan Agriculturists' Relief Act did not apply when it was passed, and that the accounts which were taken for the purposes of the subsequent decree, were taken for a special purpose—that is, for enabling the defendant to redeem on favourable terms, and did not entitle him to recover anything from the plaintiff by way of set-off MUGAPPA *v.* MAHAMAD SAHEB (1909) . **I. L. R. 34 Bom. 260**

EXECUTION OF DECREE.

See CIVIL PROCEDURE CODE, 1882, s. 230.
I. L. R. 32 All. 136

See CIVIL PROCEDURE CODE, 1882, S 234.
I. L. R. 32 All. 404

See CIVIL PROCEDURE CODE, 1882, SS 235, 320 . . **I. L. R. 34 Bom. 142**

See CIVIL PROCEDURE CODE, 1882, s. 244.
I. L. R. 32 All. 321

EXECUTION OF DECREE—*contd.*

See CIVIL PROCEDURE CODE, 1882, SS. 244, 283 . **I. L. R. 32 All. 129**

See CIVIL PROCEDURE CODE, 1882, s. 258.
I. L. R. 34 Bom. 575

See CIVIL PROCEDURE CODE, 1882, S 308.
I. L. R. 32 All. 380

See CIVIL PROCEDURE CODE (ACT V OF 1908, SS 47, 96, 104 (*b*), 135 (2).
I. L. R. 32 All. 3

See CIVIL PROCEDURE CODE, 1908, s. 48.
I. L. R. 32 All. 499

See CIVIL PROCEDURE CODE, 1908, s. 53.
I L. R 32 All. 210

See CIVIL PROCEDURE CODE, 1908, S 151,
I. L. R. 34 Bom. 135

See DECREE.

See LIMITATION ACT, 1877, SCH II, ART. 179 . . . **14 C. W. N. 465**
I. L. R. 34 Bom. 189

See LIMITATION ACT, (XV OF 1877), SCH. II, ART 179 (4) **I. L. R. 32 All. 257**

See MORTGAGE . **I. L R. 37 Calc. 796**
14 C. W. N. 617

See PENSIONS ACT, 1871, SS 6, 8, 11.
I. L. R. 34 Bom. 154

See PRE-EMPTION.
I L. R. 34 Bom. 567

——— application for—

See LIMITATION ACT, 1877, SCH. II, ART. 179 . . . **14 C. W. N. 481**

1. ——— **Inherent power**—*Civil Procedure Code (Act V of 1908), s. 152, order XIX, rules 97-98—Resistance by stranger not in possession—Inherent power of Court to investigate and put decree-holder in possession.* The Court's inherent power to pass such orders as may be necessary for the ends of justice may in a proper case be exercised against a stranger to the suit. *Surendra Nath* v. *The Chief Justice and the Judges of the High Court of Bengal, L. R. 10 I. A 171,* relied on. Where execution is resisted or obstructed by a claimant other than the judgment-debtor, and he is not in possession and makes no *bonâ fide* claim to be in possession, the Court may upon the application of the person entitled to possession under the decree enquire into the matter, and take measures to put him in possession, although rules 97 to 99 of order XXI do not cover such a case. RADHIKA MOHAN SAHA *v.* GYAN CHANDRA SAHA (1910)
14 C. W. N. 836

2. ——— **Benamidars**—*Execution, if may be directed against a person not a party to the decree—Benami.* A person who is neither a party to the decree nor a representative of the judgment-debtors cannot be made liable for the decretal amount on the ground that the judgment-debtors were *benamidars* for him. JADU NATH BOSE *v.* SRIMATI PREMMONI DASI (1910) . **14 C. W. N. 774**

EXECUTION OF DECREE—*contd.*

3. ——— **Transfer of execution proceedings**—*Jurisdiction of executing Court—Presidency Small Cause Courts Act (XV of 1882), s 31, cl (b)—Civil Procedure Code (Act V of 1908), s. 24* The meaning of s. 31, cl. (*b*) of the Presidency Small Cause Courts Act, is that the Civil Court to which a decree may be transferred for execution is the Civil Court competent to deal with it under the provisions of Act XIV of 1882, and so also the Court which, under the provisions of the present Code, is competent to deal with it Proceedings which are without jurisdiction are not proceedings that can be transferred under the provisions of the old Code, and are equally incapable of transfer under the new Code. SHAMSUNDAR SAHA *v.* ANATH BANDHU SAHA (1910) **I L R. 37 Calc. 574**

4 ——— **Parties**—*Civil Procedure Code, 1882, ss. 244, 252, 647—Decree—Execution—Death of judgment-debtor—Legal representatives of the judgment-debtor brought on record—Dispute as to property—Legal representatives should put forward their claim under s 244—They cannot raise the defence in a separate suit for possession by auction-purchaser—Auction-purchaser not a stranger* *C* sued *M* on a money-bond. *M* having died during the pendency of the suit, his widow *R* and his brother *N* were brought by *C* on the record as his representatives. A decree was passed awarding the claim out of the property of the deceased After the passing of the decree but before it could be executed both *R* and *N* died. *C* then brought on the record the defendants as the legal representatives of *M* The latter denied that they were *M*'s legal representatives or that they had any property of *M*'s which could be liable for the decree. The Court overruled the objections, and in execution of the decree attached and sold the property in dispute. The plaintiff purchased the property at the sale : and filed this suit to recover possession thereof from the defendants The lower Court disallowed the plaintiff's claim on the ground that the property having been joint property of *M* and defendants' survived to the latter at *M*'s death, and that the plaintiff obtained no title at the Court-sale which he could legally assert as against the defendants In the lower Appellate Court the plaintiff contended unsuccessfully that the defendants were debarred by the provisions of s 244 of the Code of Civil Procedure, 1882, from asserting their title. *Held*, that as the property was sold by the Court at *C*'s instance as that of *M*, the question so far was one relating to the execution of the decree arising between the decree-holder and the defendants as judgment-debtors under s 252 of the Civil Procedure Code of 1882. It was, therefore, a question in relation to them falling within s. 244 of the Code by reason of the explanation to s. 647 that applications for the execution of the decree were proceedings in suits. The defendants were consequently bound to object to the attachment and sale under that section, so far as the decree-holder's action was concerned. It was contended that whatever might have been the result if the decree-holder had been a party to the suit, the present dispute was between the auction-purchaser, who was a stranger to the previous suit and the execution proceedings therein, and the defendants, and that s. 244 did not apply:—*Held*, that though an auction-purchaser at a Court-sale in execution of a decree was not a party to the suit in which the decree was passed and though he was not a representative of either the decree-holder or the judgment-debtor for the purposes of s 244, yet if the question raised by the judgment-debtor as to the legality of the Court-sale was virtually one between the parties to the suit, that is, between the decree-holder and the judgment-debtor, and if in the decision and result of that question the auction-purchaser was interested, the judgment-debtor ought not to be allowed to attack the sale in a suit. The test in all such cases is whether the ground upon which the Court-sale is attacked as conferring no title upon the auction-purchaser affects the parties to the suit and could have as between them been raised, and determined under s 244 and whether the auction-purchaser, though not a party to that suit, is a party interested in the result. GOKULSING BHIKARAM *v* KISANSINGH (1910) **I. L. R. 34 Bom. 546**

EXECUTION OF DECREE—*concld.*

EXECUTION PROCEEDINGS.

See "COURT," MEANING OF. **I. L. R. 37 Calc. 642**

See JUDICIAL PROCEEDING. **14 C. W. N. 799**

1. ——— **Res judicata**—*Decision at one stage of execution proceedings when bar to re-opening of the question—The principle of such bar.* The decisions of the Judicial Committee in *Munga Pershad Dichit* v. *Giriya Kant, I. L. R. 8 Calc 51; Ram Kirpal* v *Rupkuari, I. L. R. 6 All 269; Bamram* v. *Nanhumal, I. L R 7 All 102*, lay down that a decision at any stage of execution proceedings should not be questioned at any later stage not because it is *res judicata* but on general principles of law to secure finality in litigation. *Srihari* v *Murari, I.L. R. 13 Calc. 257; Bhagwan* v *Dhondi, I. L R. 22 Bom 83; Khosal* v *Ukiladdi, 14 C. W. N. 114*, referred to The essence of the matter is that the judgment-debtor though called on to dispute any proposition either failed in his contention or at any rate allowed the judgment to go by default. *Sheikh Budan* v. *Ram Chandra, I. L R. 11 Bom 537*, referred to. Where therefore certain properties had been sold without notice to the judgment-debtor, and an *ex parte* order for possession made on an application which was itself time-barred, and the judgment-debtor had no knowledge of these matters till possession was actually delivered to the decree-holder when he took exception to the entire proceeding not on the ground that the last application was time-barred but that the original sale was fraudulent, and the sale was thereupon set aside : *Held*, that the *ex parte* order for possession on the previous time-barred applica-

EXECUTION PROCEEDINGS—*contd.*

tion does not operate as a bar to the judgment-debtor being heard upon any subsequent application on the question as whether it was time-barred MAZAEM HOSSEIN MUNDUL *v.* SARAT KUMARI DEBI (1909) . . . . **14 C. W. N. 433**

2. ——— *Civil Procedure Code, 1882, s 13—Res judicata—Proceedings in execution—Decision that execution time-barred, not appealed against—Question of limitation if may be again contested—Fresh proceedings on notice to judgment-debtors struck off for default—Want of adjudication, effect of* The decisions of the Judicial Committee in *Mungal Pershad Dichit* v. *Guraja Kant Lahiri*, *L. R. 8 I. A. 143*. *s c I L R. 8 Cal. 51*, *Ram Kirpal* v. *Rup Kuari*, *L. R. 11 I. A. 37 s c I L R. 6 All. 269*, and *Banaram* v *Nanhu Mal*, *L R. 11 I. A. 181 s c. I L. R 7 All 102*, affirm the doctrine that a decision at one stage of execution proceedings cannot be questioned at a later stage of the proceedings, not because it is *res judicata* under s 13, Civil Procedure Code, but upon general principles of law, for if it were not binding there would be no end to litigation. The previous decision of the Judicial Committee in *Delhi and London Bank Ld.* v *Orchard*, *I. L R. 3 Calc 47 s c. L. R. 4 I. A. 127*, does not lay down any general principle of law inconsistent with the principle laid down in the later cases *Dhonkul Singh* v. *Phakkar Singh*, *I L. R 15 All. 84*, approved. *Hurro Soondary Dassee* v. *Jugobundhoo Dutt*, *I. L. R. 6 Calc 203*, not followed. Where the question whether execution of a decree is barred by limitation is not decided because the parties do not appear, there is no bar to the adjudication of the objection when actually raised at a later stage of the proceedings *Bhola Nath v Prafulla Nath*, *I L. R. 28 Calc. 122 ; Hira Lal* v. *Durga Charan*, *10 C. W. N. 209 : s c 3 C. L. J. 240*, followed *Dhonkal Singh* v. *Phakkar Singh*, *I. L. R. 15 All 84*, *Tileshar Rai* v. *Parbati*, *I. L. R. 15 All. 198*, referred to. KHOSAL CHANDRA ROY CHOWDHURY *v* UKHILADI (1909) **14 C. W. N. 114**

3. ——— **Decree for rent**—*Assignment of decree—Limitation Act (XV of 1877), s 22—Civil Procedure Code (Act XIV of 1882), s 372—Bengal Tenancy Act (VIII of 1885), s. 148, cl. (h)—Civil Procedure Code (Act V of 1908), o. XXII, r. 12* Upon the death of the appellant during the pendency of an appeal from an order in an execution proceeding it is open to the legal representative to apply for leave to prosecute the appeal. An assignee of a decree may apply to the execution Court for leave to carry on the execution proceeding which has been commenced by the original decree-holder. S. 22 of the Limitation Act applies only to suits and does not govern execution proceedings. S 372, Civil Procedure Code (Act XIV of 1882), has not application to proceedings in execution. *J* was the zemindar ; *N* the *putnidar* under him ; *K* was the *dur-putnidar* and he obtained a decree for rent against the respondent and applied for execution thereof on the 26th June 1906 ; meanwhile the *putni* was sold in execution of a decree for rent

EXECUTION PROCEEDINGS—*concld.*

and the zemindar having purchased it on the 15th August 1906 served a notice upon the *dur-putnidar* under s 167 of the Bengal Tenancy Act and annulled his encumbrance , the *dur-putnidar* conveyed to *J*, the zemindar, amongst other properties, all decrees for rent and authorised *J*, the purchaser, to carry on all execution proceedings. *J* having applied for leave to proceed with the execution it was objected that in view of cl (*h*) of s 148 of the Bengal Tenancy Act *J* was not entitled to execute the decree. *Held*, that s 143, cl. (*h*) of the Bengal Tenancy Act did not debar the superior landlord (*i.e* , *J*) from executing the decree for rent in the same manner as the *dur-putnidar K* might have done The Court is bound to allow execution at the instance of the recorded decree-holder unless intimation has been given in the regular way prescribed by law for the admission of another person who obtains leave to carry on execution as an assignee. MANMOTHA NATH MITTER *v.* RAKHAL CHANDRA TEWARY (1909) . **14 C. W. N. 752**

EXECUTION SALE.

See UNDER-TENURE, SALE OF.
I. L. R. 37 Calc. 823

EXECUTOR.

See WILL . **I. L. R. 34 Bom. 209**

conveyance by—

See VENDOR AND PURCHASER.
I L. R. 37 Calc. 362

——— **Probate**—*Probate and Administration Act (V of 1881), ss. 3, 5, 12—Executor who has obtained order for grant but not taken out probate if may represent estate in suit—Intermeddling with estate—Lunatic, not found—Representation—Civil Procedure Code (Act XIV of 1882), s 463.* An executor who obtained an order for the grant to him of probate but took no further steps to complete the grant and who in no way intermeddled with the estate cannot properly represent the estate in a suit brought against it. A decree purporting to have been passed against such an executor does not bind the estate. LAKHYA DASYA *v.* UMA KANTA CHAKERBUTTY (1909) **14 C. W. N. 256**

EXECUTOR DE SON TORT.

——— **liability as—**

——— *Widow in possession of husband's undivided property not liable as executor de son tort, when such property has devolved on co-parceners—Decree, suit on—No suit maintainable on decree, when the passing of the decree gives no cause of action independent of the original cause of action—Res judicata—Subsequent suit on same cause of action barred though different reliefs claimed—Suit against partners, parties to.* On the death of an undivided co-parcener, the estate vests in the survivors and there is no estate belonging to a deceased person.

EXECUTOR DE SON TORT—*concld.*

The widow of the deceased, by the fact of being in possession of a portion of the joint family property, does not become liable as an executor *de son tort*, as she has not intermeddled with any estate belonging to a deceased person A suit is not maintainable on a decree, when the mere passing of the decree does not give rise to a cause of action distinct from the original obligation The passing of a decree against an undivided co-parcener, does not give rise to such a cause of action against other co-parceners, except his sons, whatever be the nature of the original debt on which the decree was passed. A decision in a prior suit bars a subsequent suit on the same cause of action, though the reliefs claimed in the two suits may be different. To a suit for winding up a partnership, all partners having distinct interests must be parties; and where such a suit, brought against all the partners, is not maintainable against some, the suit must be dismissed. RAMASAMI AIYAR *v* VEERAPPA CHETTY (1910) . . . **I. L. R. 33 Mad. 423**

EX PARTE DECREE.

See RIGHT OF SUIT.
I. L. R. 37 Calc. 197

——— *Civil Procedure Code (Act V of 1908), s. 144—Principle if applicable to restore a sale under an ex parte decree set aside—Subsequent contested decree if revives old decree—Civil Procedure Code (Act XIV of 1882), s 108.* Where an *ex parte* decree and sale under it were set aside and after a re-hearing a decree was again passed against the judgment-debtors; *Held*, that the principle of s. 144, Civil Procedure Code, cannot be availed of to set aside the order setting aside the sale. When a decree has once been set aside under s. 108, Civil Procedure Code (Act XIV of 1882), it cannot by any subsequent proceeding be taken to be revived If a decree is passed against judgment-debtors on re-hearing, it is a new decree and does not revive the former decree. RAGHU NANDAN SINGH *v.* JAGDIS SINGH (1909)
14 C. W. N. 182

EXPLOSION.

See GAS COMPANY . **14 C. W. N. 158**

EXTRAORDINARY ORIGINAL CIVIL JURISDICTION.

See PRACTICE . **I. L. R. 37 Calc. 853**

F

FACTORY.

See BOMBAY MUNICIPAL ACT, S. 390.
I. L. R. 34 Bom. 344

FAIR COMMENT.

See LIBEL . . **I. L. R. 37 Calc. 760**

FALSE DOCUMENT.

See FORGERY . **I. L. R. 38 Calc. 75**
14 C. W. N. 1076

FALSE EVIDENCE.

See "JUDICIAL PROCEEDING."
I. L. R. 37 Calc. 52

——— **Deposition under compulsion—** *Privilege—Incriminating statements in cross-examination made by a party to a suit after objection taken, not by deponent personally but by his pleader—Admissibility of the statements on subsequent trial for giving false evidence—"Compelled to answer"—Evidence Act (I of 1872), s. 132, proviso.* An incriminating statement in a deposition made by a party to the suit in cross-examination in answer to questions relevant only as affecting his credit, and objected to, not by the deponent himself but by his pleader, is not admissible against him on his subsequent trial for giving false evidence, he being in fact "compelled to answer" within the meaning of s 132 of the Evidence Act. Such objection may be taken by counsel or pleader representing the party. *Thomas* v. *Newton, 1 Moo & M 48n*, and *Rex* v. *Adey, 1 Moo. & Rob. 94*, distinguished. *Queen* v. *Gopal Dass, I. L. R. 3 Mad. 271*, explained and distinguished. *Per* TEUNON, *J* When such an objection has been taken and overruled, if any objection or privilege personal to the witness remains, it is still open to him to assert that objection or claim that privilege. EMPEROR *v.* PRAMATHA NATH BOSE (1910)
I. L. R. 37 Calc. 878

FALSE IMPRISONMENT.

——— *Preventing intending passenger of ferry boat to return from wharf through turnstile without payment—Reasonable condition.* The plaintiff with a view to take the defendant Company's ferry boat paid the usual charge of a penny on entering the defendant Company's wharf, then changed his mind and wanted to return through a turnstile provided by the Company for exit, but having refused to pay the penny which he was asked to do to be allowed to go through the turnstile, was by force prevented from going through it. There being no complaint of any excessive violence having been used: *Held*, that there was no false imprisonment, as the defendant Company was entitled to impose a reasonable condition before allowing the plaintiff to pass through their turnstile from a place to which he had gone of his own free will, and which he had contracted to leave by a different exit. The payment of one penny was a quite fair condition, and if the plaintiff did not choose to comply with it, the defendant was not bound to let him through. *Held*, further, that the question whether the attention of the plaintiff had been sufficiently drawn to the Company's notices saying that the fare must be paid was immaterial for the decision of the case. ARCHIBALD NUGENT ROBERTSON *v* THE BALMAIN NEW FERRY COMPANY, LIMITED (1909)
14 C. W. N. 410

FALSE INFORMATION.

——— **to police—**

See JURISDICTION OF CRIMINAL COURT.
I. L. R Calc. 250

FALSE INFORMATION—*concld.*

——————— *Criminal Procedure Code, s. 195—False information to Police, prosecution for—Opportunity to the informant to prove his case.* A person who lays information to the Police is entitled to have his case judicially determined before he is called upon to answer the charge of giving false information under s. 182 of the Indian Penal Code ISSER *v.* KING-EMPEROR (1910)

14 C. W. N. 765

FALSE STATEMENT BY WITNESS.

——— **before Committing Magistrate.**

See SANCTION FOR PROSECUTION.

I. L. R. 37 Calc. 618

FAMILY PROPERTY.

——————— *Division of family property under an award—House of residence—Prohibition of sale by a co-sharer of his portion to an outsider—Pre-emption—Construction—Court sale—Prohibition not effective.* An award under which family property was divided among co-sharers provided that in case of a sale by any of the co-sharers of his portion of the house of residence he should sell it to his co-sharer for a certain sum and that he should not sell it to an outsider until the expiration of two months from the date of a notice in writing saying that they (co-sharers) were not willing to buy it Subsequently a portion of the house belonging to one co-sharer having been sold in execution of a decree against him, it was purchased by an outsider The sons of one of the other co-sharers, thereupon, having brought a suit for a declaration that the Court-sale was not binding upon them: *Held*, that the term of pre-emption in the award was contemplated to attach to sales made privately and willingly and not to attachment and sales *in invitum* the judgment-debtor. VITHAL NARAYAN *v* MARUTI NARAYAN (1910) . . . **I. L. R. 34 Bom. 567**

FATHER'S DEBTS.

See HINDU LAW—DEBT.

14 C. W. N. 659

See HINDU LAW—JOINT FAMILY.

14 C. W. N. 298

FATHER'S SISTER'S SON.

See HINDU LAW—SUCCESSION.

I. L. R. 37 Calc. 214

FERRY.

See RENT . . **14 C. W. N. 994**

——————— *Private and public ferries—Maintaining a private ferry within two miles from the limits of a public ferry—Limits not declared by the Local Government—Bengal Ferries Act (Beng. I of 1885), ss. 6, 16, 28.* When the limits of a public ferry have not been declared by the Local Government under s. 6 of the Bengal Ferries Act, 1885, a conviction under ss. 16 and 28 thereof for maintaining a private ferry, without sanction, to or from any point within two miles of the public ferry, is bad MAHARAJ MANDAL *v* POKAR SINGH (1910) . . . **I. L. R. 37 Calc. 543**

FIDUCIARY RELATIONSHIP.

1. ——— **Debtor and creditor**—*Direction by creditor to debtor—How for such direction can create fiduciary relationship between creditor and debtor.* A customer who had certain amount standing to his credit in a Bank, gave directions to the Bank to utilise the money for a certain purpose and the officers of the Bank, when the customer called at the Bank, informed him that his instructions would be carried out in due course. The Bank became insolvent before the directions were so carried out. On a motion by the creditor to have his amount paid in full: *Held, per* MUNRO, *J.* that, by virtue of the direction by the customer, the Bank held the money for a specific purpose and that a fiduciary relationship was established between the customer and the Bank The customer was therefore entitled to be paid his money in full *Per* ABDUR RAHIM, *J.*—The direction by the customer did not alter the relation of creditor and debtor between the customer and the Bank into a fiduciary relationship. Such relationship could not be created unless the debtor by some unequivocal act, shows that he had changed his position into that of a bailee The mere promise to carry out the customer's directions, without doing anything to appropriate the money, is not sufficient The customer was only entitled to prove for his debt. OFFICIAL ASSIGNEE OF MADRAS *v.* LUPPRIAN (1919) . **I. L. R. 33 Mad. 145**

2. ——————— *When banker holds money as agent—Banker holding money as agent not a debtor* *O*, who owed certain money to *M C.*, sent a cheque to Bank *A* for the amount, asking *A* to place the amount to the credit of *M.C*, who at the time had no account with *A* *M.C.* was informed by *A* that the amount was placed to her credit. *M C.*, on the 5th October, asked *A* to send her the amount and *A* sent *M C.* a form of receipt to be signed by her *M C.* signed the receipt and sent it to *A*, who received it before the 20th when *A* suspended payment. *A* applied to the Court for the relief of insolvent debtors and the estate of *A* was vested in the Official Assignee On a motion by *M C* claiming payment —*Held*, that the relationship of debtor and creditor did not exist between *A* and *M.C* and that the former held the money as agent of the latter when payment was suspended *Per* MUNRO, *J.*—As the receipt and demand for payment reached *A* before payment was suspended, the result was the same as if *M.C.* attended in person and demanded payment. On *A*'s failure to remit the money, which it was *A*'s duty to do, *A* held the money in a fiduciary capacity. *Per* ABDUR RAHIM, *J* —As *A* received the money for a particular purpose and, as there was no account between *A* and *M.C*, *A* had no right to appropriate the money and did not purport to do so. Even

FIDUCIARY RELATIONSHIP—*concld.*

supposing the case were otherwise, the subsequent communication by *A* to *M.C.* that he held the money for *M C.* in accordance with the instructions received was an act of appropriation, sufficient to show *A*'s consent to hold the money in a fiduciary capacity. *In re Hallett's Estate, L. R 13 Ch D. 696*, referred to OFFICIAL ASSIGNEE OF MADRAS *v* THE ORIENTAL GOVERNMENT SECURITY LIFE ASSURANCE COMPANY (1909)
I. L. R. 33 Mad. 150

FINAL ORDER BY SUCCESSOR.

See "COURT," MEANING OF.
I. L. R. 37 Calc. 642

FINE.

——— daily fine—

See ENCROACHMENT.
I. L. R. 37 Calc. 671

FIRE INSURANCE.

See INSURANCE, FIRE.
I. L. R. 34 Bom. 1

FIRST CHARGE.

See PUTNI TENURE.
I. L. R. 37 Calc. 747

FIRST INFORMATION.

See CRIMINAL PROCEEDINGS, INSTITUTION OF . . **I. L. R. 37 Calc. 49**

FIRST MORTGAGE.

See MORTGAGE . **I. L. R. 37 Calc. 907**

FIXED RENT.

See KABULIAT, CONSTRUCTION OF.
I. L. R. 37 Calc. 626

FIXTURE.

——— notice to remove—

See CALCUTTA MUNICIPAL ACT (BENGAL III OF 1899), SS 341 (1), etc
I. L. R. 37 Calc. 384

FIXTURES, DOCTRINE OF.

See LANDLORD AND TENANT.
I. L. R. 37 Calc. 815

FORECLOSURE.

See MORTGAGE . **I. L. R. 37 Calc. 796**

——— right to decree for—

See TITLE . **I. L. R. 37 Calc. 239**

FORFEITURE.

See PARTITION . **I. L. R. 37 Calc. 918**

See PASTURE LANDS . **14 C. W. N. 372**

FORFEITURE OF PARDON.

See PARDON . **I L. R. 37 Calc. 845**

FORGERY.

See SANCTION FOR PROSECUTION.
14 C. W. N. 479

——— *Penal Code, s. 471—Forgery, interpolation of the name of a person as an attesting witness, if—False document, ingredients of—Material part of document, if altered—"Dishonestly and fraudulently"* Where the accused, after the execution and registration of a document, which was not required by law to be attested, added his name to the document as an attesting witness: *Held, per* HARINGTON and MOOKERJEE, *JJ.* (TEUNON, *J.* dissenting), that the accused was not guilty of an offence under s. 471 That the accused by the insertion of his name as an attesting witness cannot be held to have done the act either "dishonestly or fraudulently" within the meaning of these words as defined in ss 24 and 25 of the Indian Penal Code. The word "fraudulently" defined. The interpolation of the name of a person as an attesting witness to a document not required by law to be attested subsequent to its execution and registration, is not an alteration of the document in a material part. SURENDRA NATH GHOSH *v.* EMPEROR (1910) . . **14 C. W. N. 1076**
I. L. R. 38 Calc. 75

FORMA PAUPERIS.

——— appeal in—

See LIMITATION ACT (XV OF 1877), SS 5 AND 7 . **I. L. R. 34 Bom. 589**

FORUM.

See ADOPTION . **I. L. R. 37 Calc. 860**

FRAME OF SUIT.

See CHOWKIDARI CHAKRAN LANDS.
I. L. R. 37 Calc. 57

FRAUD.

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), S. 258 . **I. L. R. 34 Bom. 575**

See PLEADINGS . **I. L. R. 37 Calc. 856**

See PRESIDENCY SMALL CAUSE COURT.
14 C. W. N. 695

See RIGHT OF SUIT.
I. L. R. 37 Calc. 197

See SUIT TO SET ASIDE DECREE.
I. L. R. 32 All. 145

1. ——— **Fradulent decree**—*Presidency Small Cause Courts Act (XV of 1882), s. 94—Suit to set aside decree—Jurisdiction to set aside decree of Presidency Small Cause Court, how determined—Civil Procedure Code (Act V of 1908), if applies—Onus of proof* A suit lies in one Court to set aside a decree of another Court on the ground that the decree was obtained by fraud, as the fraud gives rise to a fresh cause of action. ABDUL HUQ CHOWDHRY *v.* ABDUL HAFEZ (1910) . **14 C. W. N. 695**

FRAUD—*concld.*

2. ———— *Suit to set aside a decree on the ground of fraud—Personal service not effected—Conduct of plaintiff.* The mere fact that the personal service of a summons has not been effected on a defendant will not render the proceedings against him absolutely abortive. But where the non-service is due to the fraudulent conduct of the plaintiff in the suit and others acting with him, and a decree is thereby obtained such decree may be set aside as fraudulent. *Mahomed Gulab* **v.** *Mahomed Sulaiman, I. L R. 21 Calc. 619*, followed. TIKA RAM *v* DAULAT RAM (1909) **I. L. R. 32 All. 145**

FRAUDULENT CONVEYANCE.

———— **Transfer of Property Act, s. 53**—*Conveyance void if intended to convert land into cash and place it beyond reach of creditors—Equity on setting aside transfer—Transferee entitled to a charge for amount spent in discharging valid prior mortgage.* A transferee for value, who takes the transfer with the intention of helping the transfer or to convert his immoveable property into cash which can be easily concealed and thus to defeat or delay his creditors cannot be treated as a transferee in good faith within the meaning of s 53 of the Transfer of Property Act. *Ishan Chunder Das Sarkar* v. *Bishu Sirdar, I L R 24 Calc. 825*, followed In such cases it lies on the transferee to prove good faith and valuable consideration; and where the latter is proved the Court will be slow in ordinary circumstances to hold that there was an absence of good faith *Amarchand* v. *Gokul, 5 Bom. L R. 142*, referred to Where the transferee has discharged a valid prior mortgage on the property sold, the transfer will be set aside only on his being given a charge for the amount spent by him in discharging such mortgage *Chidumbaram Chettiar* v *Sami Iyar, I. L R 30 Mad. 6*, distinguished PALAMALAI MUDALIYAR v. SOUTH INDIAN EXPORT COMPANY (1909) . . **I. L. R. 33 Mad. 334**

FULL COURT.

See PRESIDENCY SMALL CAUSE COURTS ACT . . **I. L. R. 34 Bom. 316**

G

GAS COMPANY.

———— **liability of**—

———— *Dangerous article—Gas plant set up in Railway Company's premises by Gas Company—Defective installation—Explosion—Liability of Gas Company for damages—Proximate cause—Liability independent of contract—Onus of proof* A Gas Company installed a supply plant at the premises of a Railway Company The plaintiffs, workmen of the Railway Company, were in charge of the boilers heated by the gas The gas exploded and killed and injured the workmen. It was found by the jury that the explosion was traceable to the negligence of the Gas Company: *Held*, that the gas plant was an article dangerous in itself and persons who instal such articles owe a peculiar duty to take precaution, when it is necessarily the case that other parties will come within their proximity. This duty arises irrespective of any contract. *Dixon* v. *Bell, 5 M. & S. 198; Thomas* v *Winchester 6 N. Y. 409;* and *Parry* v. *Smith, 4 C. P. D. 325*, referred to. *Held*, further, that initial negligence having been found against the Gas Company, they were liable unless they proved that the proximate cause of the accident was the conscious act of another volition. DOMINION NATURAL GAS CO., LD *v.* JAMES H COLLINS (1909) . **14 C. W. N. 158**

GENERAL CLAUSES ACT (U. P. ACT I OF 1904).

———— **s. 6.**

See AGRA TENANCY ACT (II OF 1901), S 20 . . **I. L. R. 32 All. 628**

GENERAL COMMITTEE.

———— **sanction by**—

See DEMOLITION OF BUILDING. **I. L. R. 37 Calc. 585**

GIFT.

See HINDU LAW—GIFT. **I. L. R. 32 All. 582**

See HINDU LAW—WIDOW **I. L. R. 34 Bom. 165** **I. L. R. 32 All. 176** **I. L. R. 37 Calc. 1**

See TRANSFER OF PROPERTY ACT, SS. 55, 123 . . **I. L. R. 34 Bom. 287**

———— **by widow.**

See HINDU LAW—GIFT. **I. L. R. 37 Calc. 1**

———— **revocation of**—

See MAHOMEDAN LAW—TRUST. **I. L. R. 34 Bom. 604**

GOODS.

———— **ultimate destination of**—

See SALE OF GOODS ACT (56 AND 57 VIC, C 71), SS. 45 AND 47. **I. L. R. 34 Bom. 640**

GOTRAJA-SAPINDA.

See HINDU LAW—SUCCESSION. **I. L. R. 37 Calc. 214**

GOVERNMENT.

See ADVERSE POSSESSION. **14 C. W. N. 317**

GOVERNMENT LAND.

See LAND ACQUISITION ACT (I OF 1894)—"LAND" . **I. L. R. 34 Bom. 618**

GOVERNOR-GENERAL IN COUNCIL.

——— powers of—

See JURY, RIGHT OF TRIAL BY.
I. L. R. 37 Calc. 467

"GOWNA" CEREMONY.

——— gift at—

See HINDU LAW—GIFT.
I. L. R. 37 Calc. 1

GRANT.

——— conflicting descriptions of—

See LEASE . I. L. R. 37 Calc. 293

——— *Maintenance Grant—Limitation—Tenancy by sufferance—Limitation Act (XV of 1877), Sch. II, Art 139—Grantor and Grantee—Adverse possession* A tenancy by sufference would not by itself make the possession of the holder rightful, so as to prevent limitation from running, but if the landlord, or the person entitled to resume the tenancy, does anything to indicate his assent to the continuance of the tenancy that would itself be sufficient to convert the tenancy by sufferance into a tenancy from year to year, and in such a case the limitation applicable is that provided by Article 139 of the second Schedule to the Limitation Act RAM CHANDRA SINGH *v.* BHIKHAMBAR SINGH (1910) . I. L. R. 37 Calc. 674

GROUNDS OF BELIEF.

See AFFIDAVIT . I. L. R. 37 Calc. 259.

GUARDIAN.

See COSTS . I. L. R. 34 Bom. 374

See GUARDIAN AD LITEM.

See GUARDIANS AND WARDS ACT.

——— application for execution by—

See LIMITATION ACT (XV OF 1877), S 8, SCH II, ART 179, EXPL. I.
I. L. R. 34 Bom. 672

GUARDIAN AD LITEM.

See MINOR . I. L. R. 32 All. 287

——— right of—

See MORTGAGE . I. L. R. 37 Calc. 897

——— *Person of unsound mind* The provisions of the Civil Procedure Code (Act XIV of 1882) with respect to the representation of lunatics not being exhaustive, a guardian *ad litem* should be assigned to a defendant who is of unsound mind although not so found. LAKHYA DASYA *v.* UMA KANTA CHAKERBUTTY (1909)
14 C. W. N. 256

GUARDIANS AND WARDS ACT (VIII OF 1890).

——— s. 9—*Application for guardianship of minor—Jurisdiction—Domicile—Place where the minor ordinarily resides.* One Panachand, a Jain inhabitant of Kapadwanj in the Ahmedabad District, lived in his house at that place. He died leaving him surviving a widow and two sons, Lallu and Wadilal, the latter a minor, who all lived in the house. Panachand's widow died about a year after him. Thereupon Panachand's house and a shop at Kapadwanj were sold and Lallu with his minor brother Wadilal went to Baroda in May 1906. At Baroda Lallu embraced Christianity and placed his minor brother, who was also baptized, in the American Mission Boarding House at that place Afterwards Lallu renounced Christianity and in the beginning of February 1909 clandestinely removed his minor brother from the Mission Boarding House at Baroda and placed him in the Jain Boarding House at Ahmedabad The minor lived at Ahmedabad till the 15th March 1909, and on the next day he was removed from Ahmedabad at the instance of the appellant, a member of the American Mission at that place, and taken to Baroda. On the 29th April 1909, Lallu presented an application to the District Court at Ahmedabad for his appointment as the guardian of the minor's person The appellant (opponent) at whose instance the minor was taken back to Baroda, contended that inasmuch as the minor lived at Baroda which was beyond the Court's jurisdiction, the Court had no jurisdiction to entertain Lallu's application under s 9 of the Guardians and Wards Act (VIII of 1890). The Court dismissed Lallu's application, he being found unfit for the appointment, but in the same proceeding appointed the respondent, a Jain Pleader, on his application, as the guardian of the minor's person and property, on the ground that as the minor lived with his father till the father's death at Kapadwanj which was within the jurisdiction of the Court and as the minor's domicile followed that of his father which was Kapadwanj, the minor's domicile was in British India and he ordinarily resided within the Court's jurisdiction. *Held*, on appeal by the opponent, setting aside the order, that the question of domicile was wholly irrelevant to the question of jurisdiction. The minor was living at Baroda and had no other place of residence He had lived at Baroda for three years with the exception of twenty-eight days Therefore Baroda was the place where the minor ordinarily resided within the meaning of s 9 of the Guardians and Wards Act (VIII of 1890) ROBERT WARD (REV) *v.* VELCHAND (1909) . I. L. R. 34 Bom. 121

GUARDIANS AND WARDS ACT (VIII OF 1890)—*concld.*

——— s. 9—*concld.*

GUJARAT TALUKDARS ACT (BOM. VI OF 1888).

——— ss. 28, 29B and 29E—*Civil Procedure Code (Act XIV of 1882), ss 235, 320—Decree against Talukdar—Execution—Decree transferred to Talukdari Settlement Officer—Notification of management—Submission by persons having claims—Application for the continuance of the execution proceedings against the legal representative of the deceased judgment-debtor—Certificate under s 29E of the*

GUJRAT TALUKDARS ACT (BOM. VI OF 1888)—*concld.*

——— **ss. 28, 29 B and 29E**—*concld.*

Gujarat Talukdars Act (Bom. Act VI of 1888)—Managing Officer—Talukdari Settlement Officer. When execution proceedings are commenced against a judgment-debtor, they can be continued after his death by substituting the name of the legal representative in place of that of the deceased judgment-debtor in the application for execution It is not necessary to file a fresh application under the provisions of s 235 of the Civil Procedure Code (Act XIV of 1882) *Hirachand Harjivandas* v. *Kasturchand Kasidas*, *I L. R 18 Bom. 224*, explained. The effect of s 29E of the Gujarat Talukdars Act (Bom Act VI of 1888) is that before the execution of a decree can be proceeded with, the Court must be satisfied that the decree-claim has been duly submitted. If the officer certifies that it has been duly submitted there is an end of the matter. If he does not so certify, the Court must wait for one month from the date of the receipt by the officer of an application for a certificate, and upon being satisfied that the claim has been duly submitted in accordance with the provisions of s. 29B of the Gujarat Talukdars Act (Bom. Act VI of 1888) it may then proceed with the execution. The expression 'managing officer' in s. 29E of the Act is merely a compendious term for "the Talukdari Settlement Officer or any other officer appointed by Government to take charge of the Talukdar's estate and keep the same in his management" referred to in s. 28 of the Act, and where the officer who takes charge of the estate and keeps the same in his management is the Talukdari Settlement Officer the 'managing officer' is merely a synonym for 'Talukdari Settlement Officer.' Where an application relating to a claim is presented to the Subordinate Judge and is forwarded by him to the Talukdari Settlement Officer, it amounts to a submission of the claim in writing within the meaning of s 29B of the Act, if the Talukdari Settlement Officer is also the managing officer PURUSHOTTAM *v.* RAJBAI (1909)

I. L. R. 34 Bom. 142

H

HAND-NOTE.

See EVIDENCE . **14 C. W. N. 1100**

HANDWRITING.

——— **Proof of Handwriting**—*Per* JENKINS, *C. J.*—Methods of proving handwriting discussed A document does not prove itself, nor is an unproved signature proof of its having been written by the person whose signature it purports to bear. S. 73 of the Evidence Act does not sanction the comparison of any two documents, but requires, *first*, that the standard writing shall be admitted or proved to be that of the person to whom it is attributed: and, *secondly*, that the disputed writing must

HANDWRITING—*concld.*

itself purport to have been written by the same person. A comparison of handwriting is at all times, as a mode of proof, hazardous and inconclusive, and especially so when made by one not conversant with the subject and without guidance from the arguments of counsel and evidence of experts. *Phoodee Bibee* v. *Govind Chunder Roy, 22 W. R 272*, referred to. The value of expert evidence of handwriting discussed *Reg.* v *Harvey, 11 Cox C. C 546*, referred to. *Per* CARNDUFF *J.*—Handwriting may, in addition to the usual methods, be proved by circumstantial evidence under s. 67 of the Evidence Act, which prescribes no particular kind of proof *Neel Kanto Pandit* v *Juggobundho Ghose, 12 B. L R App. 18, Abdool Ali* v *Abdoor Ruhman, 21 W. R 429*, and *Abdulla, Paru* v. *Gannibai, I. L. R. 11 Bom 690*, referred to. BARINDRA KUMAR GHOSE *v* EMPEROR (1909)

I. L. R. 37 Calc 467

HANSARD'S PARLIAMENTARY REPORTS.

——— **admissibility of**—

See LIBEL . **I. L. R. 37 Calc. 760**

HEREDITARY VILLAGE OFFICES ACT (MAD. III OF 1895).

——— **ss. 3, 21**—*Act applicable to offices mentioned in s. 3, cl 4, only in villages other than proprietary estates.* Cls. 3 and 4 of s. 3 of Act III of 1895 must be read together. The Act is applicable to offices mentioned in cl. 4 of s. 3 only in villages other than those in proprietary estates and s. 21 of the Act does not oust the jurisdiction of Civil Courts in regard to such offices in proprietary estates. VEERABADRAN ACHARI *v* SUPPIAH ACHARI (1909) . . **I. L. R. 33 Mad. 488**

——— **s. 5**—*Permanent lease not a transfer within the meaning of s 5* S. 5 of Madras Act III of 1895 only prohibits the transfer of ownership. A permanent lease of lands forming the emoluments of an office does not amount to a transfer of ownership within the meaning of s 5 and is not prohibited by its provisions. *Vencataswara Yetirajah Naicker* v. *Alagoo Moothoo Servagaran, 8 Moo. I A. 329*, referred to. KSHETRABARO BISSOYI *v.* SOBHANAPURAM HARIKRISTNA NAIDU (1909)

I. L. R. 33 Mad. 340

1. ——— **ss. 13, 21**—*S. 21 is no bar to suit for recovery of land* A suit in the Civil Courts for land, not based on the ground that such land constituted part of the emoluments of any of the offices described in s 13 of Madras Act III of 1895, is not barred by s. 21 of the Act. The effect of the words in s. 13 of the Act, "but such decision, etc.," is to preserve the jurisdiction of the Civil Courts even in cases where the Collector decided the case on the assumption mentioned therein and not to oust such jurisdiction where he did not. GAVARA RAMAN *v.* ADABALA RATTAYYA (1909).

I. L. R. 33 Mad. 235

HEREDITARY VILLAGE OFFICES ACT (MAD. III OF 1895)—*concld.*

——— ss. 13, 21—*concld.*

2. ——— *Prohibition in s 21 applies only when jurisdiction is conferred on Revenue Courts by s 13—Construction of statute* Notwithstanding the apparent generality of the language of s. 21 of Madras Act III of 1895, it must be held that the section takes away the jurisdiction of Civil Court only in those cases in which jurisdiction is conferred on Revenue Courts by s 13. A suit for a village officer's inam land on the expiry of a lease granted by such village officer to the defendant, is cognizable by the Civil Courts as the plaintiff has only to prove the letting and expiry of the term and he is not called upon to prove his title which the defendant will be estopped from disputing The plaintiff cannot, however, lease his claim on his title to the land. *Narasimhulu* v. *Narasimhulu, 16 Mad. L J 333*, referred to. *Keserein Narasimhulu* v *Narasimhulu Pantnaidu, I L R 30 Mad 126*, referred to It is a general principle of law that every presumption shall be made in favour of the jurisdiction of a Civil Court and that it shall not be taken away except by express words or by necessary implication MUVVULA SEETHAM NAIDU *v* DODDI RAMI NAIDU (1909) . . **I. L. R. 33 Mad. 208**

HERITABILITY.

See BUILDING LEASE.
I. L. R. 37 Calc. 377

HIGH COURT.

——— Criminal Revisional Bench.

See CRIMINAL JURISDICTION.
14 C. W. N. 806
I. L. R. 37 Calc. 714

——— jurisdiction of—

See SANCTION FOR PROSECUTION.
I. L. R. 37 Calc. 83

——— jurisdiction of, to grant bail.

See BAIL . . **I. L. R. 37 Calc. 412**

HIGH COURT, JURISDICTION OF.

1. ——— Criminal Revisional Jurisdiction—*Order by a first-class Magistrate for discontinuance of a house as a brothel—Criminal Procedure Code (Act V of 1898), ss. 6, 435 and 439—Eastern Bengal and Assam Disorderly Houses Act (II of 1907), ss. 2 to 6—Procedure in cases under ss 3 and 6 of the Act—Offence* A Magistrate of the first class, acting under s. 3 of the Eastern Bengal and Assam Disorderly Houses Act, 1907, is a "Criminal Court" within s. 6 of the Criminal Procedure Code, and the High Court has jurisdiction to revise his proceedings under ss. 435 and 439. But where such proceedings were in themselves perfectly fair and reasonable, the only error being possibly the administration of oaths to the witnesses, the High Court refused to interfere.

HIGH COURT, JURISDICTION OF—*contd.*

Ss 2 and 3 of the Act do not create any offence, the only offence created by the Act being, as provided in s 6, disobedience to the order of the Magistrate passed under s 3 The procedure to be followed under the Act is that, upon a sanction, report or order under s 5, the Magistrate must, if he intends to go further, summon the owner or other person mentioned in s 3 to show cause, and in the event of his failure to appear, he may proceed in his absence. He must next satisfy himself that the house is used as described in s 2 (*a*), (*b*) or (*c*), doing so in any way that does not violate the ordinary rules of fairness and propriety; but he is not bound to act only on legal evidence, and he need not, and possibly may not, administer oaths to persons of whom he may make enquiry. If he makes an order under s 3, proceedings for disobedience must be taken independently under s. 6, and conducted according to the ordinary procedure prescribed for the trial of offences RAJANI KHEMTAWALI *v.* PRAMATHA NATH CHOWDHRY (1910) . **I. L. R. 37 Calc. 287**

2. ——— *Criminal revisional jurisdiction—Interference on questions of law—Findings of facts when can be questioned—Criminal Procedure Code (Act V of 1898), s. 435—Indian Penal Code (Act XLV of 1860), ss 511, 124A—Attempt to commit offences—Attempt to commit the offence of sedition—Intention, a question of fact.* It is the settled practice of the High Court of Bombay to refuse to interfere, in the exercise of its revisional jurisdiction, in regard to findings of fact, except on very exceptional grounds, such as a misstatement of evidence by the lower Court or the mis-construction of documents, or the placing by that Court of the *onus* of proof on the accused contrary to the law of evidence. *Queen-Empress* v. *Sheikh Saheb Badrudin, I. L. R. 8 Bom 197; Queen-Empress* v. *Mahomed Hasan, (1886) Unrep. Cri. Cas. 244;* and *Queen-Empress* v. *Chagan Dayaram, I. L R 14 Bom. 331*, followed Under the Indian Penal Code (Act XLV of 1860) all that is necessary to constitute an attempt to commit an offence is some external act, something tangible and ostensible of which the law can take hold as an act showing progress towards the actual commission of the offence. It does not matter that the progress was interrupted. An attempt to publish sedition is complete as soon as the accused knowingly sells a copy containing the seditious article. It is none the less an attempt because something external to himself happens which prevents a perusal of the article by the buyers or any other member of the public. In cases of sedition, the question of intention is one of fact. EMPEROR *v.* GANESHI BALVANT MODAK (1909)
I. L. R. 34 Bom. 378

3. ——— High Court, Original Side, jurisdiction of—*Revisional jurisdiction over Presidency Small Cause Court—Civil Procedure Code (Act V of 1908), s. 115—"Appeal"—Practice—Sanction to prosecute—Code of Criminal*

HIGH COURT, JURISDICTION OF— *concld.*

Procedure (Act V of 1898), ss 195 (6), 439. A Judge of the Presidency Small Cause Court, Calcutta, had summarily refused an application for sanction to prosecute the plaintiff for making a false claim in a suit before him. On an application to the High Court under s. 115 of the Code of Civil Procedure, to set aside this order and to compel the Judge to determine the application:—*Held*, that the jurisdiction of the High Court in all such revisional applications, whether in respect of suits or other matters, is vested in a single Judge sitting on the Original Side. *Samsher Mundul* v *Ganendra Narain Mitter, I. L R. 29 Calc. 498, Sarat Chandra Singh* v *Brojo Lal Mukerjee, I L R 30 Calc. 986*, followed. *Haladhar Maiti* v. *Choytonna Maiti, I L. R. 30 Calc. 588*, referred to A Civil Court, when acting under s. 195 of the Criminal Procedure Code, is not in any way exercising criminal jurisdiction, and is subject to the revisional jurisdiction of the High Court under s. 115 of the Code of Civil Procedure *Sahg Ram* v. *Ramji Lal, I. L R 28 All 554, In the matter of the petition of Bhup Kunwar, I. L R 26 All 249, Ram Prosad Roy* v. *Soobi Roy, 1 C. W. N 400, Guru Churn Saha* v. *Girija Sundari Dasi, 7 C. W. N 112, Kali Prosad Chatterjee* v. *Bhuban Mohini Dasi, 8 C. W N 73, Eranholi Athan* v *King-Emperor, I L. R 26 Mad. 98*, referred to. An application under s 195, sub-s. 6, of the Criminal Procedure Code is not an appeal, hence the revisional jurisdiction under s. 115 of the Civil Procedure Code is not excluded *Hardeo Singh* v *Hanuman Dat Narain, I. L. R. 26 All. 244*, distinguished. RAMADHIN BANIA *v* SEWBALAK SINGH (1910)
I. L. R. 37 Calc. 714

HIGH COURT, POWER OF.

See INTERLOCUTORY ORDER.
14 C. W. N. 147

HIGH COURT AND DISTRICT COURT.

——— concurrent jurisdiction of—

See PROBATE . **I. L. R. 37 Calc. 224**

HIGH COURT RULES AND ORDERS.

——— rule No. 740—

See PROBATE . **I. L. R. 37 Calc. 224**

HINDU LAW.

See AGRA TENANCY ACT (II OF 1901), S. 22.
I L. R. 32 All. 314

See CIVIL COURTS ACT, S 16.
I. L. R. 33 Mad. 342

See CIVIL PROCEDURE CODE, 1882, S 234
I. L R. 32 All. 404

HINDU LAW—ADOPTION.

1. **——— Mother's sister's son also father's brother's son** The adoption of a mother's sister's son is invalid, even though he may also happen to be father's brother's son. The prohibition against the adoption of a sister's son, a daughter's son and a mother's sister's son is general, and not confined solely to persons who are neither *sapindas nor sagotras. Ramchandra* v. *Gopal, I. L R 32 Bom 619*, followed WALBAI *v.* HEERBAI (1909) . . **I. L. R. 34 Bom. 491**

2. **——— Adoption by widow**—*Adoption by widow of predeceased co-parcener after estate had vested in the widow of survivor invalid, though made with the consent of the latter.* A power given to a widow to adopt is absolutely at an end when once the estate has vested in the heir of her deceased son and is not revived even if she afterwards succeeds to the estate. *Ramakrishna* v. *Shamrao, I L. R. 26 Bom 526*, and *Manikyamala Bose* v. *Nandkumar Bose, I. L. R. 33 Calc. 1306*, referred to *Held*, also, that, in such a case, the consent of the son's heir in whom the estate had vested, will not validate the adoption. WALLIS, *J. Semble* · The same rule would apply in the case of an adoption by the widow of a co-parcener who has lost her right to adopt independently of such consent by reason of the estate having devolved on the widow of the last co-parcener. *Annamma* v. *Mabbu Bali Reddy, 8 Mad H. C. R. 108*, referred to. ADIVI SURYAPRAKASA RAO *v* NIDAMARTY GANGARAJU (1909) . **I. L. R. 33 Mad. 228**

3. **——— Custom of adoption among Jains in United Provinces**—*Adoption of married man—Proof of custom. Held* (affirming the decision of the High Court), that a custom set up that "among the Jains adoption is no religious ceremony, and that under the law or custom there is no restriction of age or marriage

HINDU LAW—ADOPTION—*concld.*

among them " was established by the evidence. In this case the adopted son was a married man and was of the same gotra as his adoptive father RUP CHAND *v.* JAMBU PRASAD (1910) **I. L. R. 32 All. 247**

HINDU LAW—AGRADANI BRAHMINS.

Agradani Brahmins position of—Gift to—Title to offerings to the dead at a sradh when vests in Agradani Brahmin—Acceptor of such gifts if liable for damages. Agradanis are a class of degraded Brahmins who accept gifts of certain prohibited things at *sradh* ceremonies. *Held*, on a consideration of the texts, that Agradani Brahmins have no vested interest in things given away at a *sradh* ceremony Before they acquire any title, the things must be given and accepted. Where an Agradani Brahmin was invited to a *sradh* and accepted the offerings of food meant for disembodied spirits, but at the time of the distribution of valuable offerings a third party interfered and under his advice the things were made over to the defendants who were other Agradani Brahmins who had not officiated as such at the *sradh* but who were not themselves alleged to have interfered in the distribution: *Held*, that the defendants acquired a valid title in the things by the gifts of the person performing the *sradh* and the plaintiff had no legally enforcible claim against him. Assuming that the plaintiff had any claim for remuneration on account of the religious services performed by him as against the person inviting him, they had no cause of act on against defendants HARI CHRUN AGRADANI *v.* SASTI CHURN AGRADANI (1910) **14 C W. N. 1005**

HINDU LAW—ALIENATION.

Alienation for marriage expenses—*Joint Hindu family—Alienation by father—Lawful family necessity—Second marriage of member of the family—Marriage in the Asura form.* The first marriage of a member of Hindu joint family is a lawful family necessity for which an alienation of family property will be justified. *Sundrabai* v *Shivnarayana, I. L R. 32 Bom. 61*, followed. Every second marriage, however, is not a legal necessity. But where a Hindu's wife died while he was 28 years of age, leaving a son about 9 years old at that time, and he married a second time and for that purpose alienated family property. *Held*, that the alienation under the circumstances was for lawful necessity and was binding on the son. *Per* RICHARDS, *J*—Bearing in mind that this (*asura*) form of marriage is quite common and that the purchase of a bride in this sense is quite common, it cannot be held that the money which was raised was not part of the expenses of a legal marriage. BHAGIRATHI *v.* JOKHU RAM UPADHYA (1910) . **I. L. R. 32 All. 575**

HINDU LAW—CUSTOM.

See HINDU LAW—ADOPTION (AMONG JAINS) . **I. L. R. 32 All. 247**

HINDU LAW—CUSTOM—*contd.*

1. **Right to officiate at cremation ceremony**—*Moriporah Brahmin—Right to religious office, suit for, if maintainable in Civil Court—Exclusive right of a priest to officiate at ceremonies, if enforceable at law—Customary exclusive right to officiate at cremation if valid—Bengal Municipal Act (III, B C, of 1884), s 259—Grant of exclusive license for sale of firewood, if ultra vires* Suits in which the principal question relates to the right to an office are suits of a civil nature and not the less so because the right claimed may depend upon the decision of questions as to religious rites and ceremonies. *Krishnama* v. *Krishnasami, I L R. 2 Mad. 62 s c. L R. 6 I. A 120; Krishnasuami* v. *Krishnamacharyar, I L R 5 Mad. 313*, referred to Where the plaintiff claimed a hereditary right to officiate exclusively as priest on the occasion of the cremation ceremony of all dead bodies brought for funeral to a particular place, the priest being paid for such service by a gratuity regulated by contract or custom: *Held*, that the suit could not be thrown out as not maintainable in a Civil Court. *Muhammad* v. *Sayad Ahmed, 1 Bom. H. C. R. Appx. 18; Mamat Ram* v. *Bapu Ram, I. L. R. 15 Calc. 159; Kali* v. *Gouri, I. L. R. 17 Calc. 906; Dinanath* v *Pratap Chandra, 4 C. W. N. 79. s.c. I. L. R 27 Calc 30; Tholoppala* v *Venkata, I. L. R. 19 Mad 62; Subbaraya* v. *Vedantacharlar, I. L. R. 26 Mad. 23; Limba* v. *Rama, I. L R. 13 Bom. 548; Gursangaya* v *Tamana, I. L R 16 Bom. 281; Murari* v *Suba, I. L. R 6 Bom. 725; Sayad Hashim* v *Husein Sha, I. L. R. 13 Bom 429; Barsati* v. *Chamru, 4 All. L. J R. 715; Chumma* v. *Babu, 7 All L J R 529*, discussed Under Hindu law, the exclusive right claimed by a priest to officiate at ceremonies of a family because his ancestors had before him performed similar ceremonies is not enforceable at law. *Radha Kishen* v. *Sham Kissen, 2 Mac. Sel. Rep. 259; Chaurast v. Deuan Chand, 6 Mac Sel. Rep. 182; Kali Churn* v *Hurree Kisto, (1848) Beng. S D. A. 532; Hurgobind* v. *Bhouanee, (1850) Beng S. D. A. 296; Gour Dass* v *Annund, (1849) Beng S. D A 428; Rama Kant* v. *Gobind, (1852) Beng S. D A 398, Roodurmun* v *Damodar, 1 Hay 365; Madhub* v. *Nobeen, 5 W. R. 224; Becha Ram* v. *Thakurmani, 10 W. R. 114; 8 B. L R 58; Magju* v. *Ram, 15 W. R. 531; 8 B. L. R 50; Lala* v. *Ganesh, (1856); Agra S. D. A. 509; Hur Lall* v. *Jeo Rakhun, (1862); Agra S. D. A. 314; Beharee* v. *Baboo, 2 Agra H. C. R. 80; Chunnu* v. *Babu, 7 All. L. J. R 529; Rama Krishna* v. *Ranga, I. L. R. 7 Mad. 424; Mooljee* v *Nagmy, (1834) Bom Sel. Rep. 116; Muncharam* v. *Amba, (1831) Bom. Sel. Rep. 159; Vithal* v. *Bababhut, 1 Bom. Pr. Jud. 471; Sitarambhat* v. *Sitaram, 6 Bom H. C. R 250; Vithal* v. *Anant, 11 Bom. H. C. R. 6; Dino Nath* v. *Sadashiv, I. L. R. 3 Bom. 9; Waman* v. *Balaji, I. L R 14 Bom 167*, referred to. Where the plaintiff, a degraded Brahmin of the *moriporah* class, claimed the right to officiate at the cremation ceremony of all dead bodies brought to a particular ghat and proved

HINDU LAW—CUSTOM—*contd.*

that she and her father had officiated as such: *Held*, that the custom pleaded could not be recognised because, in the first place, it was not immemorial; in the second place, it was not reasonable inasmuch as it tended to create a monopoly, in the third place, because it was shown not to have continued without interruption since its origin; and, fourthly, because it was uncertain in respect of the locality in which it was alleged to obtain and in respect of the persons whom it was alleged to affect *Tyson* v. *Smith*, *9 A & E 406*. *48 R. R 539*; *Mercer* v. *Denne*, [*1904*] *2 Ch 534*, *557*; *Johnson* v. *Clark*, [*1908*] *1 Ch. 303*, *311*; *Salisbury* v. *Gladstone*, *9 H L. C. 692*, *701*, *Darcy* v. *Allen*, *11 Coke 84*; *Hammerton* v. *Honey*, *24*, *W R (Eng) 603*; *Fitch* v *Rawling*, *2 H Bl 393*, *399*: *3 R R. 425*; *Gell* v *Mayor of Birmingham*, *10 L. T. N. S 497*; *Burial Board* v *Thomson*, *19 W R (Eng) 892*; *Wood* v *Burial Board*, [*1892*] *1 Q. B. 713*, referred to. GOURMONI DEBI *v* CHAIRMAN OF PANIHATI MUNICIPATITY (1910) **14 C. W. N. 1057**

2. ——— **Succession**—*Family custom in derogation of ordinary Mitakshara law governing the parties—Proof of custom—Wajib-ul-arzes—Entries in case in which there was no instance of custom ever having been observed—Entries showing contradictory views and wishes of individuals rather than fact of existence of a custom.* In a family of Ahban Thakurs in Oudh, the respondent took possession on the death of his full brother of a share of an estate called Deokalia. The appellant, step-brother of the respondent and of the deceased, sued for a moiety of the share of the estate which had belonged to the deceased on the ground that by a custom in the family a step-brother was entitled to succeed equally with the full brother, supporting his case wholly by wajib-ul-arzes made 30 years before suit, the entries in which were admittedly made by the settlement officials after inquiries from the members of the family then living, and were duly attested and signed The Court of the Judicial Commissioners found that, though there was no rebutting evidence, no instance was adduced in which the alleged custom had ever governed the devolution of the property, and that besides the entries as to the custom the wajib-ul-arzes contained other entries in which contradictory views of the parties who attested them were expressed, and which afforded internal evidence against the existence of the alleged custom, and held that the entries in the wajib-ul-arzes were not, although unrebutted, sufficient proof of a custom in derogation of the ordinary Mitakshara law. *Held*, affirming the decision of the Judicial Commissioner, that no class of evidence was more likely to vary in value than that of wajib-ul-arzes —*Muhammad Imam Ali Khan* v *Husain Khan*, *I. L. R. 26 Calc. 81*; *L. R. 25 I. A. 161*, and *Parbati Kunwar* v. *Chandarpal Kunwar*, *I. L. R. 31 All. 457*; *L. R. 36 I. A. 125*,—and whereas here it seemed probable that the entries recorded connoted the views of individuals as to the practice they would wish to see prevailing, rather than the ascertained fact of a well-established custom, the Judicial Commissioners rightly attached weight to the fact that no evidence at all was forthcoming of any instance in which the alleged custom had been observed. ANANT SINGH *v* DURGA SINGH, (1910) . . . **I. L. R. 32 All. 363**

HINDU LAW—CUSTOM—*concld.*

HINDU LAW—DEBT.

1. ——— **Father's debts**—*Mitakshara—Son's obligation to pay costs awarded against father in litigation—"Dando"—"Not vyavaharika"* Certain persons who had applied for a succession certificate in respect of debts due to a deceased relative were successfully resisted in these proceedings by one *L* They then sued *L* for a declaration of their right of heirship and the suit was decreed with costs against *L* *L* who was living with his son and grandson as members of a joint Mitakshara family having died, the decree-holders sought to recover the amount of the decree from *L*'s son and grandson: *Held*, on a review of the authorities, that *L*'s son and grandson were bound to satisfy this decree *Per* CHATTERJEE, *J.* Costs awarded by Court against a defeated litigant is not "danda" within the meaning of the text of Yajnavalkya quoted in Mitakshara, Ch VI, s. 3, verse 47. Nor are they covered by the description "not *vyavaharika*" in the text of Ushanas referred to in *Durbar Khachar* v *Khachar Harsur*, *I. L R 32 Bom 348*. PARYAG SAHU *v.* KASI SAHU (1910) . **14 C. W. N. 659**

2. ——— *Son not liable for Father's debt when barred—Contract Act, ss. 134, 151—Surety not discharged if claim against principal debtor allowed to become barred—Limitation Act, 1877, Sch II, Art 98.* Undivided family property devolving on the son by survivorship is not 'the general estate' of the father within the meaning of Art 98 of Sch II, Limitation Act, 1877, and a suit to recover from the son out of such estate the loss occasioned by his father's breach of trust is not governed by Art. 98. A son is not, under the Hindu Law, liable to pay a debt of the father which was barred against him. A debt, the recovery of which is barred by limitation, is not extinguished and the debtor is not, by reason of the bar of limitation, discharged therefrom. The omission of the creditor to sue the debtor within the period of limitation is not an act, the legal consequence of which is the discharge of the debtor and such omission has not the effect of discharging the surety under ss. 134 and 137 of the Indian Contract Act. *Carter* v. *White*, *25 Ch. D. 666*, referred to. *Ramit Singh* v *Naubat*, *I. L. R. 24 All. 504*, dissented from. SUBRAMANIA AIYAR *v* GOPALA AIYAR (1909) . **I L. R. 33 Mad. 308**

3. ——— **Widow's debts**—*Debt contracted by widow for necessary purposes binding, though no formal charge created* A debt contracted by a widow as representative of the estate, for the purposes of the estate will be binding on the estate

HINDU LAW—DEBT—*concld.*

in the hands of the reversioners, though no formal charge on the estate is created; when the creditor looks not to the personal credit of the widow but to her as representative of the estate and relies on the credit of such estate. *Ramasamy Mudaliar* v. *Sellattammal, I. L R 4 Mad 375*, referred to. REGELLA JOGAYYA *v.* NIMUSHAKAVI VENKATARATNAMMA (1910) **I. L. R. 33 Mad. 492**

HINDU LAW—ENDOWMENT.

See LIMITATION. **I. L. R. 37 Calc. 885**

——— **Limitation**—*Adverse possession—Dispute between senior and junior chelas as to succession to Hindu maths—Ekrarnama allotting one math to senior chela in perpetuity and the other to junior chela as adhikari—Suit instituted within twelve years from senior chela's death, but 27 years from date of ekrarnama—Hindu Law—Endowment* The Mohant of the temple of a Hindu idol who was in possession of two *maths*, one at Bhadrak and the other at Bibisarai, died leaving two *chelas*, or disciples, between whom a controversy arose as to the right of succession to the *maths* and the property annexed to them The dispute was settled by an arrangement embodied in an *ekrarnama*, dated 3rd of November 1874, executed by the senior *chela* in favour of the junior *chela*, by which the *math* at Bhadrak was allotted in perpetuity to the senior *chela* and his successors, while the *math* at Bibisarai and the properties annexed to it were allotted to the junior *chela* (described therein as an *adhikari*) and his successors for the purposes connected with his *math*, subject to an annual payment of R15 towards the expenses of the Bhadrak *math*. Less than twelve years after the death of the senior *chela*, but considerably more than that period after the date of the *ekrarnama*, the appellant, the successor of the senior *chela*, brought a suit against the junior *chela* to recover possession of the properties annexed to the Bibisarai *math*, on the allegation that they were *debutter* property dedicated to the worship and service of the plaintiff's idol, and held by the respondent (representing the junior *chela*) as an *adhikari* in charge of the Bibisarai *math* and asserting it to be a *math* subordinate to the Bhadark *math*:—*Held* (affirming the decision of the High Court) that the property dealt with by the *ekrarnama* was, prior to its date, to be regarded as vested not in the Mohant, but in the idol, the Mohant being only its representative and manager, and consequently that from the date of the *ekrarnama* the possession of the junior *chela*, by virtue of its terms, was adverse to the right of the idol, and of the senior *chela* as representing that idol, and that the suit was barred by limitation. DAMODAR DAS *v.* LAKHAN DAS (1910) **I. L. R. 37 Calc. 885**

HINDU LAW—GIFT.

1. ——— **Gift by Hindu widow to daughter—Mitakshara**—*Gift of immoveable property to daughter at "gowna" or "dwiragaman" ceremony—Post-nuptial gifts—Reversionery heirs.* It is competent to a Hindu widow governed by the Mitakshara law to make a valid gift of a reasonable portion of the immoveable property of her husband to her daughter on the occasion of the daughter's *gowna* ceremony; and such a gift is binding upon the reversionary heirs of her husband-CHURAMAN SAHU *v* GOPI SAHU (1909) **I. L. R. 37 Calc. 1**

HINDU LAW—GIFT—*concld.*

2. ——— **Gift by widow**—*Hindu widow—Gift made by Hindu widow with consent of next reversioners—Suit by more remote reversioners to set aside the gift.* A gift by Hindu widow, who succeeded to the separate estate of her deceased husband, of such estate is not valid and does not create a title which cannot be impeached by the remoter reversioner because it has been made with the consent of the next reversioner. *Ramphal* v. *Tula Kuari, I. L R 6 All 116*, followed. *Bajrangi* v. *Manokarnika Bakhsh Singh, I. L. R. 30 All. 1*, distinguished. *Rani Anund Koer* v *The Court of Wards, L. R 8 I A 14*, referred to BAKHTAWAR *v* BHAGWANA (1910) **I. L. R. 32 All. 176**

3. ——— *Widow's estate—Gift by a female to her daughter—Right of daughter's heir—Acceleration of estate.* The widow of a sonless separated Hindu, in possession as such of her husband's property made a gift thereof in favour of her daughter. The donee predeceased the donor, and the donor remained in possession of the property the subject of the gift. *Held*, that no action by the donee's heir to recover possession would lie during the donor's lifetime. *Bhupal Ram* v. *Lachma Kuar, I. L. R. 11 All. 253*, referred to. RUP RAM *v.* REWATI (1910) **I. L. R. 32 All. 582**

HINDU LAW—INHERITANCE.

1. ——— **Illegitimate son**—*Sudras—Mitakshara—Legitimate son—Vatan—Collateral succession—Suit by reversioner for declaration as nearest heir—Widow of the last male holder—Vested right—Limitation Act (XV of 1877), Art. 120.* Amongst Sudras governed by the Mitakshara, an illegitimate son cannot inherit a vatan collaterally in preference to legitimate heirs. The right to sue for a declaration of heirship to a vatan does not accrue until the death of the widow of the last male holder of the vatan, the widow having a vested interest in it as the nearest heir. RAVJI VALAD MAHADU *v.* SAKUJI VALAD KALOJI (1909) . . . **I. L. R. 34 Bom. 321**

2. ——— **Daughters**—*Mitakshara—Daughters inheriting property from their father—Shares separate and absolute—Tenants-in-common.* In the Bombay Presidency a daughter taking property from her father inherits it as *stridhan* and daughters take their shares separately and absolutely. When the property so inherited is not physically divided, it is held by the daughters as tenants-in-common and not as joint tenants

HINDU LAW—INHERITANCE—*concld.*

and there is no survivorship between them. In cases affecting inheritance the rule is to adhere to the decisions of the Court to which the district from which the case arose is subject VITHAPPA *v.* SAVITRI (1910) . . **I. L. R. 34 Bom. 510**

3. ——— Kamathis—*Mitakshara—Mayukha—Law governing Kamathis who live in Bombay—Succession—Anvadheya Stridhan—Preference between husband and son born of adulterous intercourse—Shudras—Forms of marriage—Presumption as to form* The Kamathis, settled in Bombay, are governed for the purposes of inheritance by the law of the Mitakshara and the Mayukha, where they agree . but where they differ, the Mayukha law must prevail. The *stridhan* of a female devolves on her death upon her husband in preference to the son born of her by adulterous intercourse. The law will, even among Shudras, presume the marriage to have been according to the approved forms if the parties belonged to a respectable family. JAGANNATH RAGHUNATH *v.* NARAYAN (1910) . **I. L. R. 34 Bom. 553**

4. ——— Jains—*Inheritance—Competition amongst heirs—Mother's sister's son preferred to maternal uncle's son.* Under Hindu Law a mother's sister's son is entitled to succeed to the estate of a deceased Hindu in preference to a maternal uncle's son. APPANDAI VAITHIYAR *v.* BAGUBALI MUDALIAR (1910)
I. L. R. 33 Mad. 439

HINDU LAW—JOINT FAMILY.

1. ——— Mitakshara joint family property—*Effect of partition—Profits from investment of joint family property if joint family property—Suit against* karta *for partition and accounts—Limitation—Limitation Act (XV of 1877), Sch. II, Arts. 62, 127.* A family may be joint with reference to certain properties though divided in respect of others. *Gavi Shankar Parabhuram* v. *Atmaram Rajaram, I. L. R. 18 Bom. 611; Purushottam* v. *Atmaram, I L R. 23 Bom 597, 601,* referred to. Where plaintiff sued for partition and account of profits of joint family property in the hands of the *karta,* Art. 127 and not Art. 62 of Sch. II of the Limitation Act (XV of 1877) applied. *Mathusami Mudaliar* v. *Nallakulantha Mudaliar, I. L. R. 18 Mad. 418,* followed. *Banoo Tewary* v. *Doona Tewary, I. L. R. 24 Calc. 309; Thakur Prasad* v. *Partab. I. L. R. 6 All. 442,* distinguished. Profits derived from the investment of joint family capital in business or from immoveable properties belonging to the joint family, are joint family property. A suit for account in respect of such money, being incidental to the suit for ascertainment of share on partition, comes under Art. 127 of the Limitation Act. *Pirthi Pal* v. *Jowahir Singh, I. L. R 14 Calc 483,* referred to. AJODHYA PURSHAD *v.* MAHADEO PURSHAD (1909) . . . **14 C. W. N. 221**

**2. ——— *Mitakshara joint family—Civil Procedure Code (Act V of 1908),*

HINDU LAW—JOINT FAMILY—*contd.*

o **XXI,** *r. 101—Order restoring member of joint Mitakshara family to a share—Validity—Suit brought after claim-case dismissed for default—Decision if binding—Civil Procedure Code (Act XIV of 1882), ss 278, 102, 103—Dismissal of suit for default—Effect—Res judicata or not—Mitakshara son's right to resist execution against family property of decree against father and after suit for injunction dismissed for non-prosecution.* A member of a joint Mitakshara family has no defineable share in the joint property previous to partition. An order under o. XXI, r 101, Civil Procedure Code, 1908, restoring such member to a specific share of such property on the ground that he is in possession of such property is therefore bad. Where a suit for injunction to restrain the sale of joint Mitakshara family property in execution of a decree against the father on the ground that the debts of the father did not bind the son's interest in the property was dismissed for non-prosecution: *Held,* that the son was no longer entitled to contend in execution proceedings that the entire property was not liable to be sold. *Cooverjee* v. *Dewsey, I. L. R. 17 Bom. 718,* followed. A decree-holder against Mitakshara father can proceed against the entire joint property. *Muddun Thakur* v *Kantoolall, L. R. 1 I. A. 321; Nanomi Babasin* v. *Madan Mohan, L. R. 13 I. A. 1: s c. I L. R 13 Calc. 21, Juhur Mal* v. *Eknath, I L. R. 24 Bom. 843. s c. 3 Bom. L. R 322,* followed. *Kallapa* v. *Venkatesh Vinayak, I. L R. 2 Bom. 676; Duguppa* v *Venkatramnaya, I L. R. 5 Bom 493; Patil Hari* v. *Hakam Chand, I. L. R. 18 Bom 363,* distinguished. SANKAR NATH PUNDIT *v.* MADAN MOHAN DAS (1909) . **14 C. W. N. 298**

3. ——— Mortgage—*Joint family property, mortgage of share in, by co-parcener—Procedure for enforcement.* Where a member of a joint Mitakshara family represented to mortgagees of a portion of that property, that he had the power to charge the property, he was bound to make good his representation by exercising such proprietary right over it as he possessed, *viz.,* by partition. *Mohabeer Pershad* v. *Ramyad Singh, 20 W. R. 192: 12 B. L. R. 90,* followed. *Madho Pershad* v. *Mehrban Singh, I. L. R. 18 Calc. 157; Jamuna Prasad* v. *Ganga Prasad, I. L. R. 19 Calc. 401; Bunwari Lal* v. *Daya Sankar, 13 C. W. N. 815,* referred to Such mortgage, so far as the specific shares of the mortgagors were concerned, was void, but the Court may direct that the joint property be held in specified shares and in such case the lien of the mortgage will be fixed to the share of the mortgagors thus specified. MAHANTH RAM SUNDAR DAS *v.* NATHUNI SINGH (1909)
14 C. W. N. 552

4. ——— Joint family business—*Mitakshara—Agreement entered into with one member of the family—Such member competent to sue without joining other members* Where a contract is entered into on behalf of a joint family business by a member of the family in his own name, it is

HINDU LAW—JOINT FAMILY—*contd.*

not necessary that any members of the joint family other than those who entered into the contract should be parties to the suit brought thereon. *Gopal Das* v. *Badri Nath, I L R 27 All 361,* followed *Agacio* v *Forbes, 14 Moo. P C 160; Bungsee Singh* v *Soodist Lall, I L. R 7 Calc 739,* and *Hari Vasudeo Kamat* v *Mahadu Dad Gavda, I. L. R 20 Bom 435,* referred to *Shamrathi Singh* v *Kishan Prasad, I. L R 29 All 311,* distinguished. DURGA PRASAD *v* DAMODAR DAS (1909) . . . **I. L. R. 32 All. 183**

5. ——— **Mother's share on partition**—*Mitakshara—Joint Hindu family—Stridhan—Succession. Held,* that according to the Mitakshara, the share which the mother in a joint Hindu family obtains after the death of the father, on partition of the joint family property between the mother and the sons, becomes the mother's *stridhan,* which devolves on her death upon her own heirs and not upon the heirs of her husband *Chhaddu* v *Naubat, I. L R 24 All 67,* and *Gambhir Singh* v *Mahraddhuj. All. L. J 673,* followed *Sheo Shankar* v. *Devi Sahai, I. L R. 25 All 468,* distinguished, DEBI MANGAL PRASAD SINGH *v* MAHADEO PRASAD SINGH (1909)

I. L. R. 32 All. 253

6. ——— **Grant by Government**—*Family joint before annexation of Oudh—Confiscation of and grant by Government to person who had been a member of joint family—Whether subject of grant is self-acquired or joint—Separation by one member, effect of—Burden of proof.* Before the annexation of Oudh, two estates Bohra and Sherpur (the latter being about one-third of the two together) belonged to an undivided Hindu family consisting of three brothers. The estates were confiscated on the annexation of the province, but shortly afterwards the Sherpur estate was granted by the Government to the eldest of the three brothers (the other two being minors) who was the head and manager of the family, the grant being expressed to be "by way of favour and award and not in consideration of proprietary right." In this appeal, the appellant's (plaintiffs') case in a suit for a half share of the self-acquired property held by the eldest brother at his death, whether it was two-thirds or one-third of Sherpur, depended on whether the estate granted was the self-acquired property of the grantee, or the joint property of the three brothers. The appellants represented the second of the three brothers (who had separated himself in 1865 after a quarrel with his elder brother, taking a third share of the property), and the respondent was the third brother. The Court of the Judicial Commissioner (reversing the decision of the Subordinate Judge) held on the evidence and circumstances of the case, and the inferences to be drawn as to the intention of the Government in making the grant and from its terms and the conduct of the parties, that the estate granted was the joint property of the three brothers up to the time when the second brother

HINDU LAW—JOINT FAMILY—*concld.*

separated; that the other two brothers remained joint until the death of the eldest brother in 1869, when the respondent became entitled by survivorship to two-thirds of the property; and that the appellants had altogether failed to prove that the eldest brother died entitled to either two-thirds or one-third of the Sherpur estate as separate property That court consequently dismissed the suit, and the Judicial Committee on appeal affirmed that decision KEDAR NATH *v* RATAN SINGH (1910) . . . **I. L. R. 32 All. 415**

HINDU LAW—MAINTENANCE.

——— **Wife's maintenance**—*Maintenance allowed by will of husband to wife—Unchastity of wife after husband's death—Maintenance not affected—Widow—Unchastity—Starving maintenance* A Hindu widow was entitled to maintenance at the rate of R24 a year under her husband's will. After the husband's death, the widow led for some time an unchaste life and gave birth to a child; but since then she remained chaste. She sued to recover maintenance allowed to her under her husband's will. It was contended in reply that the plaintiff, on account of the unchaste life which she had led for some time after her husband's death, had forfeited her right even to bare or starving maintenance. *Held,* negativing the contentions, that though the annuity was granted by the will as "maintenance" that word could not be understood as imposing any condition or restriction so as to cut down or extinguish the right to R24 a year given by the will. The rule that the will of a Hindu must be construed with due regard to Hindu habits and notions applies only where there is ambiguity. Caution must be used in applying that rule and it must be adopted only where a suggested construction of doubtful language leads to manifest absurdity or hardship. The general rule to be gathered from the texts is that a Hindu wife cannot be absolutely abandoned by her husband. If she is living an unchaste life, he is bound to keep her in the house under restraint and provide her with food and raiment just sufficient to support life; she is not entitled to any other right. If, however, she repents, returns to purity and performs expiatory rights, she becomes entitled to all conjugal and social rights, unless her adultery was with a man of a lower caste, in which case, after expiation, she can claim no more than bare maintenance and residence *Honamma* v. *Timannabhat, I. L R. 1 Bom. 559; Valu* v. *Ganga, I L. R. 7 Bom. 84;* and *Vishnu Shambhog* v *Manjamma, I. L. R. 9 Bom. 108,* discussed. PARAMI *v.* MAHADEVI (1909) . . . **I. L. R. 34 Bom. 278**

HINDU LAW—MINOR.

——— **Hindu family-firm**—*Trade—Manager passing promissory notes in the firm's name without any advantage to the firm—Minor co-parcener—Liability of minor co-parcener in suit on promissory notes* One *H* persuaded *N* who

HINDU LAW—MINOR—*concld.*

was the only adult male member of a joint Hindu firm carrying on an ancestral trade to sign certain promissory notes in the name of his ancestral firm. *N* signed the notes without the knowledge of the other member of the firm and without any advantage to the firm The notes were subsequently endorsed by *H* to *B* who advanced monies on them to *H*. On a suit by *B* to recover the amounts due on the notes from *N*'s firm, *K*, a minor co-parcener, pleaded that he was not liable. *Held*, varying the decree of HEATON, *J*, that the minor's share in the firm was liable. *Per* CHANDAVARKAR, *J*—Under Hindu law a joint family, which carries on a trade handed down from its ancestors becomes a trading family; trade being one of its *kulacharas* (duty or practice) it attracts to itself all the necessary incidents of trade. The rule of Hindu law that debts contracted by a managing member of a joint family are binding on the other members only when they are for a family purpose, is subject to at least one important exception Where a family carries on a business or profession, and maintains itself by means of it, the member who manages it for the family has an implied authority to contract debts for its purposes, and the creditor is not bound to inquire into the purpose of the debt in order to bind the whole family thereby, because that power is necessary for the very existence of the family. Where a minor is a co-parcener in a joint family his *share* in the family property is liable for debts contracted by his managing co-parcener for any *family purpose* or any purpose incidental to it. If the family is a trading firm, the same rule must apply with this difference that the terms *family purpose* or *purposes incidental to it* must have given way for the expression *trading purpose* or *purpose incidental to it* having regard to the nature and objects of the family business. The circulating of a negotiable instrument is in the case of a joint family, trading as a firm, necessary for its existence and its purposes. The minor's share is therefore bound by it since it constitutes an obligation of the firm. *Per* BATCHELOR, *J*—In establishing the legal relations of a joint firm the Courts treat it as a kind of partnership and apply the principles of that law. The test to be applied in cases of this kind is rather the apparent authority of the manager than the actual necessity of the family, for while there is no absolute necessity for the family to trade at all, when once the family trade is admitted, all usual acts done in the normal course of carrying it on may be considered necessary to the trade. RAGHUNATHJI TARACHAND *v.* THE BANK OF BOMBAY (1909) . . . . **I. L. R. 34 Bom. 72**

HINDU LAW—PARTITION.

1. ——— **Reunion after partition**—*Whether, after separation in estate, a minor member continuing to live jointly with an adult member, becomes a reunited member of the family—Survivorship.* When after partition in distinct shares amongst Hindu brothers, some of whom were minors, the minor brothers continued to live jointly with one of the adult brothers, that fact alone did not constitute a reunion with him after partition In order to constitute a reunion there must be a junction of estate with an intention to reunite. RUSI MENDLI *v.* SUNDAR MENDLI (1910) **I. L. R. 37 Calc. 703**

2. ——— **Self-acquisition**—*Certain family property allotted to one branch of the family—Subsequent purchase of the allotted property by a member of another branch with his own money—Exclusion by the purchaser of the other member of his branch.* Certain family property was allotted to a member of one branch of the family in virtue of a compromise It was subsequently purchased by a member of the other branch with his own money which was not part of the joint family money. The purchaser did not intend by the purchase to merge the property in the joint family property, and excluded his brother from it. Subsequently, the brother having brought a suit for partition claimed a share in the property purchased by the defendant along with a share in the other joint property: *Held*, that the plaintiff was not entitled to claim a partition subject to the right of the defendant to retain an additional quarter share for himself, but that the property purchased by the defendant became his self-acquisition. BAJABA *v.* TRIMBAK VISHVANATH (1909) **I. L. R. 34 Bom. 106**

3. ——— **Temporary partition**—*Temporary partition, to be followed by final partition, does not destroy the tenancy-in-common—Purchaser of part from one parcener entitled to enforce his right by partition—Alienee of portion—Necessary party to such suit.* An award, which purported to effect a division between several individual co-parceners, allotted each co-parcener a share and provided that each should enjoy the share allotted to him for a time and that at the end of such period, a re-partition according to profit and loss should be effected of all the properties. One of the co-parceners sold a portion of the share allotted to him to *A* and a portion was sold in execution of a decree for rent obtained by the landlord against all the co-parceners and purchased by *B* *A* brought a suit for partition against all the co-parceners without making *B* a party. *B* was subsequently added more than twelve years after the date when the re-partition was directed by the award: *Held*, (i) that the partition was not final and the co-parceners, till the final partition, continued to be joint-tenants or tenants-in-common, subject to the separate enjoyment of the portions allotted to each (ii) That the proper remedy of *A* was by a suit for partition of the whole under the terms of the award. (iii) That *B* was a necessary party and as he was joined after the suit as against him was barred, the suit ought to be dismissed DURI BHAGAVANLU *v.* TADEPATRI VEERAVADHANULU (1909) **I. L. R. 33 Mad. 246**

HINDU LAW—REVERSIONER.

——— **Alienation by female heir**—*Reversioner, suit by—Suit by next male reversioner*

HINDU LAW—REVERSIONER—*concld*

maintainable without proof of collusion of nearer female reversioner. The rule that suits to set aside alienations by a female heir having a limited interest should be brought by the next reversioner and that a remote reversioner cannot sue without showing collusion between the female heir and the next reversioner, does not apply where the next reversioner is a female and the suit is brought by the nearest male reversioner Where a widow having daughters makes an alienation, the nearest male reversioner may sue without proving collusion between the widow and daughter. CHIDAMBARA REDDIAR *v.* NALLAMMAL (1909)

I. L. R. 33 Mad. 410

HINDU LAW—SELF-ACQUISITION.

See PARTITION . **I. L. R. 34 Bom. 106**

——— **Gains of science**—*Mitakshara—Partition—Self-acquired property—Astrology—Earnings made by unaided efforts without detriment to the family property* In a joint Hindu family governed by the Mitakshara one of the sons obtained certain elementary education in astrology from his father, but no money of the family was expended on that education While still quite young this son ceased to live with the rest of the family; continued his studies in astrology on his own account, and ultimately managed, by the exercise of his skill as an astrologer, to acquire a considerable sum of money without detriment to the family property *Held*, that this money was his self-acquisition and could not properly be regarded as belonging to the joint family Katyayana's definition of "acquisition through learning which is not participable" cited in the Mitakshara [I., 4, 8] is not exhaustive, but illustrative merely. *Lachmin Kuar* v. *Debi Prasad, I. L. R. 20 All. 435*, and *Paulhem Valoo Chetty* v. *Paulhem Sooryah Chetty, I. L. R. 1 Mad. 252*, referred to. DURGA DAT JOSHI *v.* GANESH DAT JOSHI (1910)

I. L. R. 32 All. 305

HINDU LAW—STRIDHAN.

See HINDU LAW—SUCCESSION.

I. L. R. 37 Calc. 863
I. L. R. 34 Bom. 385

1. ——— **Succession**—*Executor, conveyance by, as beneficial owner—Construction—Inconsistency between recitals and operative part—All-estate clause, effect of—Partition—Permanent improvements—Enquiry* A Hindu governed by the Bengal school of Hindu Law, died in 1886 leaving a will, whereby he devised certain immoveable property to his daughter *A*, subject to certain charges by way of maintenance Probate was granted to the executors, *B* and others, in 1887. *A* died in 1891 intestate, leaving her surviving five sons, *B* and four others, a married daughter, and two unmarried daughters, the plaintiff and another. In 1900 a conveyance of the property was executed by *B* and his surviving brothers in favour of the defendants. This deed proceeded on the assumption that *B* and his brothers were absolutely and beneficially entitled to the property; they, however, purported to convey "all the estate, right, title, interest, claim and demand whatsoever of the vendors unto and upon the said property." On a suit instituted by the plaintiff for the declaration of her title to a moiety in the property and for partition:—*Held*, that, inasmuch as on *A*'s death the property devolved as her *stridhan* property on her unmarried daughters, and as *B* did not purport to sell and convey as executor, the plaintiff was entitled to a moiety in the property as against the defendants, and that a decree for partition should be passed Inasmuch as by a decree, dated the 10th December 1903, the defendants became absolutely entitled to the moiety which had devolved on plaintiff's unmarried sister, and as the defendants had expended moneys in improving the property:—*Held*, that there must be an account of the money expended by the defendants in permanent improvements since the 10th December 1903, and an enquiry as to the extent to which the present value of the property had been increased by the expenditure. PURA SUNDARI DASI *v* BIJRAJ NOPANI (1910) . . **I. L. R. 37 Calc. 362**

2. ——— *Kamathis—Mitakshara—Mayukha—Law governing Kamathis who live in Bombay—Succession—Anvadheya Stridhan—Preference between husband and son born of adulterous intercourse—Shudras—Forms of marriage—Presumption as to form.* The Kamathis, settled in Bombay, are governed for the purposes of inheritance by the law of the Mitakshara and the Mayukha, where they agree; but where they differ, the Mayukha law must prevail. The *stridhan* of a female devolves on her death upon her husband in preference to the son born of her by adulterous intercourse. The law will, even among Shudras, presume the marriage to have been according to the approved forms if the parties belonged to a respectable family. JAGANNATH RAGHUNATH *v.* NARAYAN (1910) . **I. L. R. 34 Bom. 553**

3. ——— *Succession—Stridhan—Property acquired by adverse possession.* Where a Hindu female acquires a title to property by means of adverse possession, such property becomes her *stridhan* and descends as such to her heirs. *Brij Indar Bahadur Singh* v *Ranee Janki Koer, L. R. 5 I. A. 1*, and *Mohim Chunder Sanyal* v. *Kashi Kant Sanyal, 2 C. W. N. 161*, followed. KANHAI RAM *v.* MUSAMMAT AMRI (1910)

I. L. R. 32 All. 189

HINDU LAW—SUCCESSION.

See HINDU LAW—SURVIVORSHIP.

I. L. R. 33 Mad. 165

1. ——— **Stridhan**—*Dayabhaga—Ayautuka stridhan—Succession—Property of childless widow—Step-brother—Husband's younger brother.* Under the Dayabhaga law, the younger brother of the husband of a childless widow is entitled to succeed to her *ayautuka stridhan* property in preference to her step-brother. DEBIPRASANNA ROY CHOWDHRY *v.* HARENDRA NATH GHOSE (1910)

I. L. R. 37 Calc. 863

2. ——— *Anvadheya stridhan—Sons and daughters succeed equally—Among daughters unmarried have preference—Mayukha.* A Hindu female, governed by the Mayukha, died leaving property which she inherited from her father, under a deed of gift subsequent to her marriage. She left her surviving three daughters and one son. A dispute as to succession having arisen :—*Held*, that the property being *anvadheya* stridhan, should be divided equally among her son and daughters : with this difference, however, as to the latter, that the unmarried should have preference over the married. *Ashabai* v. *Haji Tyeb Haji Rahimtulla, I L. R 9 Bom. 115*, and *Sitjabai* v. *Wasantrao, 3 Bom. L R 201*, followed. DAYALDAS LALDAS *v.* SAVITRIBAI (1909)
I. L. R. 34 Bom. 385

3. ——— **Step-mother**—*Mitakshara—Father's sister's son—Gotraja-sapinda—Letters of Administration.* In the Bengal Presidency, under the interpretation of the Mitakshara law as accepted in the districts governed by that law, a step-mother is not entitled to succeed to the estate of her step-son either as a *gotraja-sapinda* or in preference to the father's sister's sons. *Jotı Lal* v *Durani Kower, B. L. R. Sup. Vol 67, Kumaravelu* v. *Virana Goundan, I. L. R 5 Mad. 29, Muttammal* v. *Vengalakshmi Ammal, I. L. R 5 Mad. 32*, and *Rama Nand* v. *Surgiani, I. L. R. 16 All. 221*, referred to. *Kesserbai* v. *Valab Raoji, I. L R 4 Bom. 188, Lallubhai Bapubhai* v. *Cassibai, I. L. R. 5 Bom. 110*, and *Russoobai* v. *Zoolekhabai, I. L. R. 19 Bom. 707*, not followed, having regard to the principle laid down in *Collector of Madura* v. *Mootoo Ramalinga Sathupathy, 12 Moo I. A 397.* TAHALDAI KUMRI *v* GAYA PERSHAD SAHU (1909)
I. L. R. 37 Calc. 214

4. ——— **Uncle of half blood**—*Mitakshara—Competition between uncle of the half blood and the son of an uncle of the whole blood. Held*, that according to the Hindu law of the Mitakshara school, an uncle of the half blood succeeds in preference to the son of an uncle of the whole blood, the former being nearer in propinquity than the latter. *Suba Singh* v. *Sarafraz Kunwar, I. L. R 19 All. 215*, distinguished. KESRI *v.* GANGA SAHAI (1910). . **I. L. R. 32 All. 541**

5. ——— **Step-brother**—*Mitakshara—Ahban Thakurs—Step-brother if may succeed equally with brother of whole blood—Special family custom contrary to Mitakshara—Proof—Wajib-ul-arz, entries in—Value as evidence of custom* Under the Mitakshara law a brother of the whole blood is entitled to succeed to estate of a deceased brother in preference to a step-brother, and in the absence of evidence sufficient to establish such a special custom in the family as to rebut the ordinary presumption that the Mitakshara law prevailed the claim of the step-brother to an equal share was properly rejected. There is no class of evidence which is more likely to vary in

value according to circumstances than that of *Wajib-ul-arzes. Muhammad Imam Ali Khan* v. *Sardar Husain Khan, L. R 25 I. A. 161, 169 : s c 2 C. W. N. 737 ; Musammat Parbati Kunwar* v. *Rani Chandrapal Kunwar, L R 36 I A. 125 : s c 13 C W. N. 1073*, followed Where from an internal evidence it seemed probable that the entries recorded connoted the views of individuals as to the practice they would wish to see prevailing rather than the ascertained fact of a well-established custom : *Held*, that the Court in India had properly attached weight to the fact that no evidence at all was forthcoming of any instance in which the alleged custom had been observed. THAKUR ANANT SINGH *v* THAKUR DURGA SINGH (1910) . **14 C. W. N. 770**

6. ——— **Daughter's daughter's son**—*Mitakshara—Bandhus—Alienation by Hindu widow—Legal necessity Held*, that under the Mitakshara law a daughter's daughter's son is a *bandhu*, and in the absence of any other heir is entitled to succeed to the estate of the last owner. *Ajudhia* v. *Ram Sumer Misir, I L. R 31 All 454*, followed RAM PHAL THAKUR *v* PAN MATI PADAIN (1910)
I. L. R. 32 All. 640

7. ——— **Samanodakas**—*Mitakshara—Succession—Bandhus—Cause of action. Samanodahas* are those who participate in the same oblations of water and include descendants from a common ancestor more remotely related than the thirteenth degree from *propositus*. A sister's son is only a *bandhu*. A *samanodaka* is a nearer heir to a deceased Hindu than a *bandhu* and will exclude the latter. Where therefore *B* was in the thirteenth degree from the common ancestor *L*, and *D* was in the fourteenth degree from him, and *B*'s widow executed a deed of compromise declaring that after her death *D* would become entitled to the possession of *B*'s property : *Held*, that this gave no cause of action to *B*'s sister's son for a suit for declaration of title and cancellation of the deed. *Bai Devkore* v *Amritram Jamiatram, I. L R 10 Bom. 372*, referred to RAM BARAN RAI *v.* KAMLA PRASAD (1910) . . . . **I. L. R. 32 All. 594**

8. ——— **Illegitimate son**—*Illegitimate son succeeds as a co-heir with the widow.* The illegitimate son of a separated Hindu, who dies without legitimate male issue, succeeds as a co-heir with the widow, daughter or daughter's son. *Ramalinga Muppan* v. *Pavadai Goundan, I. L. R. 25 Mad. 519, 521*, approved. *Chinnammal* v. *Varadarajulu, I. L R. 15 Mad. 307*, followed. MEENAKSHI ANNI *v.* APPAKUTTI (1909)
I. L. R. 33 Mad. 226

9. ——— *Illegitimate son, by widow whose re-marriage is prohibited, has no right of succession—Adverse possession—Right of true owner to recover possession by inducing tenant to attorn.* An illegitimate son by a Sudra widow, whose re-marriage is forbidden, has no right of

HINDU LAW—SUCCESSION—*contd.*

inheritance. *Venkatachela Chetty* v. *Parvatham, 8 Mad H. C. 134,* referred to. To entitle the illegitimate son to succeed, the connection must not be adulterous or forbidden by law. Where persons, holding adversely to the true owner, enjoy the lands through a tenant who, however, has not been let into possession by them or their predecessors in title, the true owner is not estopped from recovering possession by inducing such tenant to attorn to him ANNAYYAN *v* CHINNAN (1909)
I. L. R. 33 Mad. 366

10. ——— **Religious endowment**—*Ballavacharya Gosains. Held,* that where there is a dedication of property by a private individual for religious purposes, in the absence of any proof of disposal or direction by the dedicator, the trusteeship will vest in the latter's heirs *Held,* also, that as regards temples belonging to the Ballavacharya Gosain sect the ordinary rule of the Hindu law does not apply; but the succession is regulated by special customs In the present case a custom set up by the plaintiffs by which a daughter's sons were entitled to the succession was held not to have been established *Gossami Sri Gridharji* v. *Romanlalji Gossami, I L. R 17 Calc. 3, Rajah Mutta Ramalinga Setupati* v. *Perianayagum Pillai, L. R 1 I. A 209,* and *Srimati Janoki Debi* v *Sri Gopal Acharjia, L R. 10 I A. 32: I L. R. 9 Calc 766,* referred to MOHAN LALJI *v.* MADHUSUDAN LALA (1910)
I. L. R. 32 All. 461

11. ——— **Sanyasis**—*Property left by—Succession—Dasnami sanyasis—Chela's right to succeed—Biraja Home ceremony, if essential to valid appointment of chela—How and at what age performed—Period of probation—Mulmantras—"Yati," mohunt if—Nomination of chela as successor or election by neighbouring mohunts, if indispensable—Subordinate muth, if must be governed by rules of parent muth—Lapse of mohunt's property on death to monastery, custom of—Proof.* The inadequacy or untrue recital of the consideration is a question between the assignor and the assignee, and would not of itself be sufficient to invalidate the transaction *Lal Achal Ram* v *Kazim Husain Khan, L R. 32 I. A. 113 · s.c. 9 C. W. N. 477; Kunwar Ram Lal* v. *Nilkanth, L. R. 20 I. A. 112; Rajah Mokham Singh* v *Rajah Rup Singh, L. R. 20 I. A 127; Bhagwat Dayal* v. *Debi Dayal, L. R 35 I. A. 48: s c. I. L. R. 35 Calc. 420, 12 C. W. N. 393,* followed. *Held,* on the evidence, that according to the custom of the *dasnami sanyasis,* every aspirant for entrance into the order has to pass through a period of probation which may extend to months or even years and during which period it is open to the *chela* to revert to his natural family. It is not till the performance of the final ceremony or the *biraja home,* that the aspirant is irrevocably attached to the sect and completely severed from his family. It is, therefore, essential to entitle a *chela* to claim by inheritance the estate of his

HINDU LAW—SUCCESSION—*concld.*

guru that the *biraja home* should have been duly performed. It is not usual to whisper the *mulmantras* into the ears of the novice at the time of the first initiation when it is still uncertain whether he will or will not return to the enjoyments of worldly life, though some *mantras* may be recited on such an occasion *Quære:* Whether *biraja home* ceremony can be performed when the *chela* is under sixteen years of age; but unquestionably the rule is that the *chela* must have reached years of discretion so as to be able to realise for himself the full significance of the final act of the renunciation of the world *Mahunt Ramji Das* v *Lachhu Dass, 7 C. W N 145; Gyana Sambandha Pandara Sannadhi* v *Kandasami Tambiran, I L. R. 10 Mad. 375; Rangacharlar* v. *Yegna Dikshatur, I. L. R. 13 Mad. 524,* referred to. The *chela* of a mohunt cannot claim to be the latter's heir under the rule which allows a "virtuous pupil" to succeed to a "*yati.*" The ordinary rule is that among the *sanyasis* generally no *chela* has right as such to succeed to the property of his deceased *guru;* he must be nominated by his *guru,* such nomination being generally confirmed by the mohunts of the order, or in default of such appointment, he must be elected by the mohunts and principal persons of the sect in the neighbourhood But this is not a universal rule, and in some cases, according to custom, the principal *chela* succeeds as of right even without such appointment or formal election; but apparently an election or recognition by members of the sect is necessary. *Nirunjun Barthee* v. *Padaruth Barthee, 1 S. D A. N. W. P. 512; Madho Das* v. *Kamta Das, I. L. R. 1 All. 539; Jugunnath Paul* v. *Bidianund Dutt, 10 W. R. 172; Chhajju Gir* v. *Diwan, I. L. R 29 All. 109,* referred *to.* When one *muth* is the offshoot of another, there is no fixed rule which regulates the relation between the two, and it cannot be said that the subordinate *muth* necessarily follows the customs of the parent one. *Kashibashi* v. *Chitumbernath, 20 W. R. 217; Gyana Sambandha Pandara Sannadhi* v. *Kandasami Tambiran, I. L. R. 10 Mad. 375, Prayad Das* v. *Mohunth Kriparam, 8 C L. J. 499,* relied on. In order to establish a custom that on the death of the mohunt his properties lapse to the *muth* and devolve on the spiritual head thereof, it is necessary to show, not only that in some instances the properties had so passed to the spiritual head, but also that this had taken place in the presence of a *chela* who would otherwise have been competent to take by inheritance GOSSAIN RAMDHAN PURI *v.* GOSSAIN DALMIR PURI (1909)
14 C. W. N. 191

12. ——— **Unchaste widow**—*Unchastity of widow no bar to her right of succession to her son.* There is no authority for holding that a Hindu lady, who after her husband's death has waited and then gone to live with another man, is thereby excluded from inheritance to the estate left by her son. DAL SINGH *v.* MUSAMMAT DINI (1909 . . . . **I. L. R. 32 All. 155**

HINDU LAW—SURVIVORSHIP.

———— Reunited family, succession in— *Mitakshara—Law of survivorship.* Succession in a reunited family governed by Mitakshara law is by survivorship. This mode of succession is not confined to the members who actually reunited and the son of a reunited member born after the reunion is reunited and takes by survivorship *Krishtraya* v *Venkatramayya, Appeal No. 170 of 1901 (unreported)*, followed. *Ramasamy* v. *Venketasan, I L R. 16 Mad 440*, distinguished. SAMUDRALA VARAHA NARASIMHA CHARLU *v.* SAMUDRALA VENKATA SINGARAMMA (1909) **I. L. R. 33 Mad. 165**

HINDU LAW—WIDOW.

1. ———— Alienation— *Alienation by Hindu widow for legal necessity—Property sold for more than the amount needed—Reversioner if may recover on paying amount needed* Where a Hindu widow *bonâ fide* executed a permanent lease upon taking a selami of ₹125 in order to pay off a debt of her husband's amounting to ₹100. *Held*, that this was not a case in which the reversioners should be allowed to recover possession upon payment of the amount actually needed to pay off the loan *Chatra Narayan* v *Uba Kunwari, 11 C. W. N. 474*, and *Sugeeram* v. *Juldoobuns, 1 B L. R. 201*, relied on The Privy Council in *The Deputy Commissioner of Kheri* v. *Khanjan Singh, 11 C. W N. 474*, did not intend to lay down the rule that a Hindu widow is in every instance bound to sell property for payment of a debt due from her husband for exactly the sum due to the creditor. FELARAM ROY *v* BAGALANAND BANERJEE (1910) . . . **14 C. W. N. 895**

2. ———————— *Alienation by widow—Consent by the body of reversioners—Transfer for legal necessity—Transaction for consideration—Gift—Partial relinquishment by widow.* The general principle which prohibits a Hindu widow's alienation of immoveable property otherwise than for legal necessity is relaxed in cases where the consent of the whole body of persons constituting the next reversion has been obtained. The reason for the relaxation is referred to the principle that the consent of the persons who would be interested in disputing the transfer affords good evidence that the transfer was in fact made for justifying cause, that is, for legal necessity. *Bajrangi Singh* v. *Manokarnika Bakhsh Singh, I. L. R. 30 All. 1*, and *Vinayak* v *Govind, I. L. R. 25 Bom. 129*, followed. The operation of the principle is ordinarily limited to transfers for consideration and cannot be extended to voluntary transfers by way of gift where there is no room for the theory of legal necessity. It should not be extended to cases where the widow has made only a partial relinquishment of the estate. PILU *v.* BABAJI (1909) . **I. L. R. 34 Bom. 165**

3. ———————— *Sale by widow to next reversioner of a portion of property—Validity—Conveyance of whole estate to reversioner in consideration of latter conveying back half absolutely—*

HINDU LAW—WIDOW—*contd.*

Validity. A Hindu widow can transfer by sale a portion of the property left to her to the then reversioner so as to confer on the latter an absolute estate in such portion. *Hem Chunder Sanyal* v. *Surnomoyi Debi, I. L. R 22 Calc. 354; Nobo Kishore Sarma Roy* v. *Hari Nath Sarma Roy, I. L R 10 Calc 1102; Behari Lal* v *Mudho Lal Ahir Gayawal, I. L R. 19 Calc 236*, referred to. Where it was alleged that a lady possessing the limited estate of a Hindu daughter sold the properties to the then reversioner, on the latter agreeing by way of consideration to convey half the properties back absolutely to the lady, and that in pursuance of the agreement the reversioner reconveyed half the properties to the lady: *Held*, that the conveyances must be shown to have formed parts of one and the same transaction to be open to attack on that ground. KANURAM DEB *v* KASHI CHANDRA SHARMA CHOWDHURI (1909) **14 C. W. N. 226**

4. ———————— *Hindu widow, transfer by, without legal necessity, whether becomes void on widow's death—Transferee's suit to eject transferee of non-transferable occupancy holding.* The transfer by a Hindu widow of properties inherited from her husband when neither legal necessity justifying the sale nor consent of the reversioners has been established, does not become void, on the death of the widow. *Bhagwat Doyal Singh* v *Debi Doyal Sahu, 12 C W. N. 393. s c. I. L. R 35 Calc. 420; Bejoy Gopal Mukherjee* v. *Krishna Mahishi, 1 C W. N. 424. s.c. L. R. 34 I. A 87; I. L. R. 34 Calc. 329*, considered. Such a transferee can maintain a suit for ejectment against the transferee of an occupancy holding which is not transferable by custom KISHORI PAL *v.* SHEIKH BHUSAL BHUIYA (1909) **14 C. W. N. 106**

5. ———— Compromise by— *When such compromise tantamount to alienation—Possession when adverse to reversioner.* Where a widow, whose right to property is disputed, enters into a compromise with the disputant by which she merely undertakes to make no further claim to the property, such compromise does not amount to an alienation by the widow and the disputant does not hold the property under any title derived from her *Sheo Narain Sing* v *Khurgo Koery* and *Sheo Narain Singh* v. *Bishen Prosad Singh, 10 C. L. R. 337*, dissented from. *Radha Mohan Dhas* v. *Ram Das Dey, 3 B. L R. 362*, referred to. The possession of the disputant under the above circumstances was adverse to the reversioner. In considering whether possession is adverse to the reversioner, it must be seen whether it is based on a title derived from the widow as representative of the separate estate or on one which leaves no separate estate to be represented. KAMBINAYANI TIMMAJI *v* KAMBINAYANI SUBBARAJU (1910) . . **I. L. R. 33 Mad. 473**

6. ———— Debt— *Debt contracted by widow for necessary purposes binding, though no formal charge created.* A debt contracted by a widow as

HINDU LAW—WIDOW—*concld.*

representative of the estate, for the purposes of the estate will be binding on it in the hands of the reversioners, though no formal charge on the estate is created when the creditor looks not to the personal credit of the widow but to her as representative of the estate and relies on the credit of such estate *Ramasamy Mudaliar* v. *Sellattammal, I L R. 4 Mad 375,* referred to. REGELLA JOGAYYA *v.* NIMUSHAKAVI VENKATARATNAMMA (1910) . **I. L. R. 33 Mad 492**

7. ——— **Gift**—*Mitakshara—Gift by Hindu widow to daughter—Gift of immoveable property to daughter at "gowna" or "dwiragaman" ceremony—Post-nuptial gifts—Reversionary heirs.* It is competent to a Hindu widow governed by the Mitakshara law to make a valid gift of a reasonable portion of the immoveable property of her husband to her daughter on the occasion of the daughter's *gowna* ceremony; and such a gift is binding upon the reversionary heirs of her husband. CHURAMAN SAHU *v* GOPI SAHU (1909) **I. L. R. 37 Calc. 1**

8. ——— *Gift made by Hindu widow with consent of next reversioners—Suit by more remote reversioners to set aside the gift.* A gift by Hindu widow, who succeeded to the separate estate of her deceased husband of such estate, is not valid and does not create a title which cannot be impeached by the remoter reversioner because it has been made with the consent of the next reversioner. *Ramphal* v. *Tula Kuari, I. L R 6 All. 116,* followed. *Bajrangi* v. *Manokarnika Bakhsh Singh, I. L. R. 30 All. 1.* distinguished. *Rani Anund Koeri* v. *The Court of Wards, L. R 8 I. A 14,* referred to BAKHTAWAR *v.* BHAGWANA (1910) . **I. L. R. 32 All. 176**

9. ——— **Re-marriage**—*Hindu Widows' Re-marriage Act, s 2—Hindu widow—Re-marriage permitted by rules of caste—Widow not deprived of property of first husband.* Where the rules of her caste recognize the right of a Hindu widow to re-marry, a second marriage has not the result of divesting her of the property of her first husband. MULA *v.* PARTAB (1910) **I. L. R. 32 All. 489**

10. ——— **Unchaste widow**—*Unchastity of widow no bar to her right of succession to her son.* There is no authority for holding that a Hindu lady, who after her husband's death has waited and then gone to live with another man, is thereby excluded from inheritance to the estate left by her son. DAL SINGH *v.* MUSAMMAT DINI (1909) . . . **I. L. R. 32 All. 155**

HINDU LAW—WILL.

1. ——— **Bequest for establishment of an idol**—"*Relinquishment in favour of a sentient person*"—*Bequest for establishment of an image and worship of a Hindu deity.* The principle of Hindu law, which invalidates a gift other than to a sentient being capable of accepting

HINDU LAW—WILL—*concld.*

it, does not apply to a bequest to trustees for the establishment of an image and the worship of a Hindu deity after the testator's death, nor does it make such a bequest void *Upendra Lal Boral* v *Hem Chundra Boral, I. L. R. 25 Calc. 405, Rojomoyee Dassee* v. *Troylukho Mohiney Dassee, I. L R. 29 Calc. 260,* and *Nogendra-Nandini Dassi* v *Benoy Krishna Deb, I L R. 30 Calc. 521,* overruled so far as they conflict with the view of this Full Bench BHUPATI NATH SMRITITIRTHA *v.* RAM LAL MAITRA (1909) **I. L. R. 37 Calc. 128 14 C. W. N. 18**

2. ——— *Validity of bequest to complete a temple and instal an idol Held,* that a bequest to complete the building of a temple which had been commenced by a testator and to instal and maintain an idol therein is a valid bequest under the Hindu law *Bhupati Nath Smritirtha* v *Ram Lal Moitra, I. L. R. 37 Calc. 128; 14 C. W. N 18,* followed. MOHAR SINGH *v.* HET SINGH (1910) . . . . **I. L. R. 32 All. 337**

3. ——— **Absolute gift**—*Construction—Bequest to widow—"Malik like myself"—Absolute or limited gift—Limitations over after absolute bequest—Validity* The use of the word *malik* in a Hindu will does not conclusively show that the donee is intended to take an absolute interest in the property, but the effect of the disposition is to be gathered from all the terms of the will. In spite of the use of the word "*malik,*" the donee may take a limited interest in the property. *Shib Lakshan Bhakat* v. *Tarangini Dasi, 8 C. L. J. 20; Surajmani* v. *Rabi Nath Ojha, I. L R 30 All 84;* and *Punchoomoney Dossee* v. *Troylucko Mohiney Dossee, I. L. R 10 Calc. 342,* referred to. But where the testator uses the expression "*malik* like myself," the effect is ordinarily to create an absolute interest in the donee *Raj Narain Bhaduri* v. *Katyayni Dabee, I. L R. 27 Calc. 649,* referred to Where a power of disposition is conferred on the donee, it is an indication that the testator intended to create an absolute interest in favour of the donee *Toolsi Dass Karmokar* v. *Madan Gopal Dey, I. L. R 28 Calc 499,* and *Jogeswar Narain Deo* v. *Ram Chandra Dutt, I L. R. 23 Calc. 670,* referred to. Where the will of a Hindu ran as follows:—"After my death my wife, the said *M.*, will be *malik* like myself having right to give away, sell, etc, and will manage, look after and possess these properties, and after the death of my wife, the said *M.*, all that property will come under the control of my said son, if he is reformed otherwise, if the said son's character is not reformed up to the death of my said wife, that property, etc., will come after my wife's death on behalf of my grandsons, under the control and management of their mother *S*" *Held,* that *M*, the widow, took an absolute estate, and that the effect of the subsequent clause is not to cut down to a life-estate the full proprietary rights conferred on the widow by the previous clause AMARENDRA NATH BOSE *v.* SHUBADHANI DASI (1909) . **14 C. W. N. 458**

HINDU WIDOW.

See HINDU LAW—GIFT.
I. L. R. 32 All. 582

See HINDU LAW—SUCCESSION.
I. L. R. 32 All. 155

See HINDU LAW—WIDOW.

See HINDU WIDOWS' REMARRIAGE ACT.
14 C. W. N. 346

See LAND ACQUISITION ACT (I OF 1894), S. 32 . . **14 C. W. N. 1024**

See LIMITATION ACT (XV OF 1877), S. 19; SCH II, ARTS 120 AND 148.
I. L. R. 32 All. 33

——— **sale by, of portion of property—**

See HINDU LAW—WIDOW.
14 C. W. N. 226

HINDU WIDOWS' REMARRIAGE ACT (XV OF 1856).

——— *Widow re-marrying according to custom whether forfeits husband's estate —Mortgage suit—Whether the mortgagor's widow after re-marriage could represent the mortgagor's state—Mortgage decree, effect of, when obtained against person wrongly sued as legal representative of mortgagor—Civil Procedure Code (Act XIV of 1882), ss. 332 and 335—Order under, made without investigation—Effect.* One *P* executed a mortgage in favour of the plaintiff. On *P*'s death leaving him surviving his mother (*S*) and widow (*C*), the plaintiff brought a suit on the mortgage against the widow (*C*) after she had re-married according to custom, and he got a decree in execution of which the plaintiff purchased the mortgaged property and got symbolical possession The plaintiff subsequently brought an ejectment suit against the mother (*S*): *Held*, that as at the time when the suit was instituted to enforce the mortgage, the widow had ceased to be the widow of the deceased mortgagor, she did not represent the estate of the mortgagor and the decree and sale in execution were not binding upon the mother of the deceased mortgagor who was his legal representative at that time. *Khairajmal* v *Piam, 9 C. W. N. 201: s.c. L. R. 32 I. A. 23, Malkarjun* v. *Narhari, 5 C. W. N. 10: s.c. L. R. 27 I. A. 216*, referred to. A Hindu widow after re-marriage forfeits her deceased husband's estate, even though there is a custom of re-marriage in her caste. *Rasal Jehan* v. *Ram Saran, I. L. R. 22 Calc. 589, Vithu* v. *Gobinda, I L. R. 22 Bom 321*, referred to. GOURI CHURN PATNI *v.* SITA PATNI (1909) **14 C. W. N. 346**

——— **s. 2**—*Hindu widow—Re-marriage permitted by rules of caste—Widow not deprived of property of first husband.* Where the rules of her caste recognise the right a Hindu widow to re-marry, a second marriage has not the result of divesting her of the property of her first husband. MULA *v.* PARTAB (1910) . . **I. L. R. 32 All. 489**

HINDU WILLS ACT (XXI OF 1870).

See RECEIVER . **I. L. R. 37 Calc. 754**

——— **ss. 2 and 5.**

See ADMINISTRATOR-GENERAL'S ACT.
I. L. R. 34 Bom. 506

See CERTIFICATE, ADMINISTRATOR-GENERAL'S ACT . **I. L. R. 34 Bom. 506**

See PROBATE . **I. L. R. 34 Bom. 506**

See SUCCESSION ACT.
I. L. R. 34 Bom. 506

See WILL . **I. L. R. 34 Bom. 506**

——— *Indian Succession Act (X of 1865), s 187—Administrator-General's Act (II of 1874), s. 36—Will made in Bombay—Property worth less than ₹1,000—Probate—Administrator-General's certificate.* A will made in Bombay is subject to the provisions of the Hindu Wills Act (XXI of 1870) and a person claiming as a legatee under the will is not entitled to sue without taking out probate as he would be bound by s. 187 of the Indian Succession Act (X of 1865) which is incorporated in the Hindu Wills Act (XXI of 1870). The provision of the Administrator-General's Act (II of 1874) is not affected by the incorporation in the Hindu Wills Act (XXI of 1870) of s. 187 of the Indian Succession Act (X of 1865). NARAYAN SHRIDHAR *v.* PANDURANG BAPUJI (1910)
I. L. R. 34 Bom. 506

"HOLDING OUT."

——— **principle of—**

See PRINCIPAL AND AGENT.
14 C. W. N. 381

HUSBAND'S YOUNGER BROTHER.

See HINDU LAW—AYAUTUKA STRIDHAN.
I. L. R. 37 Calc. 863

I

ILLEGALITY.

See CRIMINAL PROCEDURE CODE, SS 233, 236, 239 . **I. L. R. 32 All. 219**

See CRIMINAL PROCEDURE CODE, SS. 234, 235, 537 . . **I. L. R. 32 All. 57**

ILLEGITIMATE SON.

See HINDU LAW—INHERITANCE.
I. L. R. 33 Mad. 366

ILLICIT SALE.

See OPIUM . **I. L. R. 37 Calc. 581**

ILLNESS.

See DISMISSAL FOR DEFAULT.
14 C. W. N. 573

IMPUTATION OF CRIMINAL OFFENCE.

See LIBEL . **I. L. R. 37 Calc. 760**

INAM.

See SARANJAM . **I. L. R. 34 Bom. 329**

INAM COMMISSIONER.

——— **decision of—**

See REVENUE JURISDICTION ACT, S 4, SUB-S. (*a*) . **I. L. R. 34 Bom. 232**

INAMDAR.

See BOMBAY LAND REVENUE CODE (BOM. ACT V OF 1879), SS 3 (11), 217.
I. L. R. 34 Bom. 686

INAM LAND.

See LAND REVENUE CODE (BOM. ACT V OF 1879), SS 3 (11), 217.
I. L. R. 34 Bom. 686

INCRIMINATING STATEMENTS IN CROSS-EXAMINATION.

See FALSE EVIDENCE.
I. L. R. 37 Calc. 878

INCUMBRANCE.

See BENGAL TENANCY ACT, S 86.
14 C. W. N. 229

See SALE FOR ARREARS OF REVENUE.
14 C. W. N. 677

——— **avoidance of—**

See REVENUE SALE.
I. L. R. 37 Calc. 559

——— **by non-occupancy raiyat—**

See LANDLORD AND TENANT.
I. L. R. 37 Calc. 709

——— *Putni Tenure—Customary right to cut and appropriate trees, whether an incumbrance—Putni Regulation (VIII of 1819), s. 11—Right of an auction-purchaser at a sale held under the Putni Regulation to avoid such incumbrance—Bonâ fide engagement made by the defaulting proprietor with resident and hereditary cultivators, effect of.* A customary right to cut and appropriate trees is an incumbrance within the meaning of s. 11 of Regulation VIII of 1819 A purchaser of a *putni taluq* at a sale held under Regulation VIII of 1819 is not entitled to hold the property free from a customary right or a right recognised by usage which has grown up during the subsistence of the *putni*, and under which occupancy raiyats are entitled to appropriate and convert to their own use such trees as they have the right to cut down, inasmuch as he is not entitled to cancel a *bonâ fide* engagement made by the defaulting proprietor with the resident and hereditary cultivators. PRADYOTE KUMAR TAGORE *v* GOPI KRISHNA MANDAL (1910) . . **I. L. R. 37 Calc. 322**

INDEMNITY TO ESTATE OF SEBAIT.

See PARTIES . **I. L. R. 37 Calc. 229**

INDIAN COMPANIES ACT.

See COMPANIES ACT.

INDIAN COUNCILS ACT (24 & 25 VIC., c. 67.)

——— **s. 22, proviso—**

See JURY, RIGHT OF TRIAL BY.
I. L. R. 37 Calc. 467

INDIAN INSOLVENCY ACT (11 and 12 VIC., c. 21).

——— **s. 39—Set off**—*Right of set off exists against Official Assignee in respect of bills discounted before and dishonoured after insolvency* Under ss 39 and 40 of the Indian Insolvency Act, anything can be set off in India which can be set off in England under the Bankruptcy law in force for the time being Mutual credits, which may be set off, include credits which have a natural tendency to terminate in debt and not merely credits which must terminate in debts. Claims in respect of bills discounted for the insolvent before insolvency and dishonoured by the makers after insolvency, can be set off under s. 39 of the Indian Insolvency Act. *Miller* v. *National Bank of India, I. L. R. 19 Calc. 149*, dissented from *Young* v *Bank of Bengal, 1 Moo. I. A. 87*, referred to and explained. *Alsager* v *Currie, 2 M & W 751*, followed. *In the matter of* CANTHOM & Co (1909)
I. L. R. 33 Mad. 53

——— **ss. 39, 40**—'*Mutual credits' relate to date of vesting order—Presidency Small Cause Courts Act, s 69—Money deposited as security under section does not become the property of the decree-holder—Right to set off claims for unliquidated damages.* Money deposited in Court under s. 69 of the Small Cause Courts Acts does not become the property of the decree-holder. Before the date of the vesting order an insolvent had obtained two decrees against a debtor. In the case of one of the decrees, the debtor applied for a reference under s. 69 of the Presidency Small Cause Courts Act and the amount deposited by him remained in Court on the date of the vesting order. The High Court declining to express an opinion on the reference, the decree became absolute and the money was paid to the Official Assignee. Before the date of the vesting order the debtor had brought a suit against the insolvent, and a decree was passed therein against the insolvent after the vesting order : *Held*, that the debtor was entitled under s 39 of the Insolvency Act to set off against the amount of the two decrees obtained against him the amount due by the insolvent under the decree obtained by the debtor. The decree in respect of which the deposit was made remained unsatisfied in law on the date of the vesting order and was an item of credit within the meaning of s 39 on such date The subsequent payment to the Official Assignees did not deprive the debtor of his right of set off. Per *Krishnaswamy Ayyar, J*—Claims for unliquidated damages cannot be the subject of set off as mutual credits under s. 39 of the Indian Insolvency Act. Such claims are however mutual dealings within s. 38 of the English Acts of 1869 and 1883 and can form the subject of set off under s. 40 of the Indian Insolvency Act,

INDIAN INSOLVENCY ACT (11 AND 12 VIC., c. 21)—*concld.*

——— ss. 39, 40—*concld.*

which makes the provisions of the subsequent English Acts applicable to the proof of claims under the Indian Insolvency Act CHENGALVARAYA MUDALY *v* THE OFFICIAL ASSIGNEE OF MADRAS (1910) **I. L. R. 33 Mad. 467**

——— s. 73—*'Person aggrieved,' who is—Official Assignee, right of, to appeal as person aggrieved—Fiduciary relationship—Effect of Demand by creditor in creating fiduciary relationship between him and debtor.* A 'person aggrieved,' within the meaning of s. 73 of the Indian Insolvency Act, is a person against whom a decision has been pronounced which has wrongly refused him something which he had a right to demand. Where a debtor, whose claim to be paid in full was rejected by the Official Assignee, moved the Insolvency Court making the Official Assignee, a party and obtained an order directing payment in full, the Official Assignee is a 'person aggrieved' within the meaning of s 73 of the Act and is entitled to appeal against such order *Ex parte Sidebottam, in re Sidebottam, 14 Ch D 458, 465*, referred to *In re Lamb; Ex parte Board of Trade, [1894] 2 Q B. 805*, referred to The Official Assignee, in refusing the creditor's claim, does not act judicially and the notice of motion to Court cannot be considered as an appeal against a judicial or quasi-judicial proceeding of the Assignee. Where a person pays money into a Bank without giving any directions, the money becomes the property of the Bank and the relation between the Bank and the person paying is that of debtor and creditor. *Per* MUNRO, *J*—Where the person paying money without any directions makes a proper demand for payment after the money has become payable, the debtor is bound to remit at once such money to the creditor, and the debtor thereafter holds such money in a fiduciary capacity, just as if the creditor had received payment and deposited it with directions to remit *Per* ABDUR RAHIM, *J*.—It is not competent to a creditor by making a demand upon his debtor, to convert the latter into a trustee in respect of the amount due Such a change in the relationship can be brought about only by the debtor agreeing to accept the altered position and by his doing something towards effectuating the trust. OFFICIAL ASSIGNEE OF MADARS *v.* RAMACHANDRA IYER (1909) **I. L. R. 33 Mad. 134**

INDIVIDUAL COMMUNITY.

See PUBLIC ROAD, RIGHT TO USE. **I. L. R. 34 Bom. 571**

INFANT.

See PROBATE **14 C. W. N. 1068**

INFORMATION.

——— *Criminal Procedure Code, s 250—"Information," meaning of—Compensation—Order if can be made against servant for information given on behalf of master—Information subsequent to the original complaint.* The question whether a servant can be held responsible under s. 250, Criminal Procedure Code, for an information lodged on behalf of his master, is a question of fact and depends on the question whether the servant is merely the mouthpiece of the master and is merely giving expression to his master's accusation, or whether he joins personally in the accusation himself. In the former case no order of compensation should be made against the servants under s 250, Criminal Procedure Code. "Information" referred to in s. 250, Criminal Procedure Code, need not necessarily be the information on which the case is instituted. Where a person making a complaint against an accused person subsequently gives information leading to the accusation of others in the case, he may be dealt with under s. 250, Criminal Procedure Code, in respect of his subsequent information. The words "from information received" in s. 157, Criminal Procedure Code, refers to the information given in s 154, Criminal Procedure Code. JAGDAMI PERSHAD SINGH *v* MAHADEO KANDOO (1909) . . . **14 C. W. N. 326**

INFRINGEMENT OF TRADE-MARK.

See TRADE-MARK **I. L. R. 37 Calc. 204**

INHERENT POWER OF COURT.

See EXECUTION OF DECREE. **14 C. W. N. 836**

See PRACTICE . **I. L. R. 34 Bom 408**

——— to amend decree.

See PRACTICE . **I. L. R. 37 Calc. 649**

INHERITANCE.

See HINDU LAW—DAUGHTERS. **I. L. R. 34 Bom. 510**

See HINDU LAW—JAINS. **I. L. R. 33 Mad. 439**

INJUNCTION.

See CIVIL PROCEDURE CODE (1908), s. 9. **I. L. R. 32 All. 527**

See PUBLIC ROAD, RIGHT TO USE. **I. L. R. 34 Bom. 571**

See TRADE-MARK **I. L. R. 37 Calc. 204**

——— *Perpetual Injunction restraining execution of a decree obtained in a previous suit against the plaintiff—Specific Relief Act (I of 1877), ss. 54, 56 (e)* Where the defendant has not invaded, or threatened to invade, the plaintiff's right to, or enjoyment of, any property, and there is no apprehension of a multiplicity of judicial proceedings to which the plaintiff need be subjected for the purpose of establishing or safeguarding his rights, or for preventing the acquisition of rights of the defendant.—*Held*, that

INJUNCTION—*concld.*

s 56 of the Specific Relief Act constitutes a manifest bar in the way of the plaintiff's suit for a declaration that the defendant had no title to lands in suit, and for perpetual injunction restraining the defendant from taking possession of the lands by executing his decree. *Dhuronidhur Sen* v *Agra Bank*, *I L R 4 Calc 380*, followed in principle *Appu* v *Raman*, *I L R 14 Mad 425*, not followed KARNADHAR HALDAR *v.* HARIPRASAD ROY CHAUDHURI (1910) **I. L. R. 37 Calc. 731**

INQUIRY.

See MAGISTRATE, TRANSFER OF **I. L. R. 37 Calc. 812**

INSOLVENCY;

See CIVIL PROCEDURE CODE, 1882, CH. XX . . . **14 C. W. N. 143**

See INDIAN INSOLVENCY ACT

See PROVINCIAL INSOLVENCY ACT (III OF 1907), S 15 . **I. L. R. 32 All. 645**

See PROVINCIAL INSOLVENCY ACT (III OF 1907), S 43 (2) . **I. L. R. 32 All. 547**

1. ——— Ad interim protection—*Provincial Insolvency Act (III of 1907), ss 2, sub-s 1, cl (g), 47, 46, 16 (6), 13, 18—High Court if may grant interim protection and appoint receiver pending appeal —Inherent jurisdiction—Civil Procedure Code (Act V of 1908), s. 151.* Where an appeal has been preferred against an order refusing the appellant's application to be declared an insolvent, the High Court has power, in the exercise of its inherent jurisdiction as a Court of appeal, to make an *ad interim* order for protection of the appellant and for the appointment of a receiver of his assets during the pendency of the appeal. *Panchanan Singha* v. *Dwarka Nath Roy, 3 C L J 29; Hukum Chand Baid* v *Kamalanund Singh, 3 C L J 67,* relied on. As there appeared to be substantial points in controversy in the case, which required consideration, the High Court granted *ad interim* protection pending appeal to the appellant and also appointed a receiver of his assets ABDUL RAJAH *v* BASIRUDDIN AHMED (1910) **14 C. W. N. 586**

2. ——— Punjab Laws Act (IV of 1872) s. 27—*Order of Insolvent Estates Court at Amritsar declaring debtors insolvents and appointing a Receiver—Subsequent order of High Court, Bombay, under 11 and 12 Vict (Indian Insolvency Act) declaring some debtors insolvent and vesting their property in Official Assignee, Bombay.* By the provisions of the Punjab Laws Act (IV of 1872) as to the property in the Punjab of debtors who have, by an order under the Act, been declared insolvents, the Court is entrusted (by s. 27) with merely administrative powers with regard to it, and no transfer of the property takes place: *Held,* therefore by the Judicial Committee (reversing the decision of the Chief Court), that where such an order had been made by the Insolvent Estates Court at Amritsar in respect of certain debtors

INSOLVENCY—*concld.*

carrying on business at (amongst other places) Amritsar and Bombay, and a Receiver of their property had been appointed by the Court, a subsequent order of the High Court of Bombay in its Insolvency Jurisdiction, made under the Indian Insolvency Act (11 and 12 Vict, c. 21), declaring the same debtors insolvents and vesting their property in the Official Assignee of Bombay, had the effect, notwithstanding that it was of later date than the order of the Punjab Court, of vesting all the property of the debtors, including that in the Punjab, in the Official Assignee of Bombay. The High Court had rightly held that the Insolvent-debtor sections of the Civil Procedure Code (Act XIV of 1882) were not applicable to the case OFFICIAL ASSIGNEE, BOMBAY, *v.* REGISTRAR, SMALL CAUSE COURT, AMRITSAR (1910) **I. L. R. 37 Calc. 418**

INSPECTION OF DOCUMENTS.

See CIVIL PROCEDURE CODE (V OF 1908), O XI, R 14 . **14 C W. N. 147**

INSURANCE (FIRE).

——— *Liability of Company for further loss Per* CHANDAVARKAR, *J*—The loss or damage by fire which is insured against in a policy of insurance, cannot include loss caused by deterioration of the property insured consequent on neglect (if any) of the Insurance Companies to take care of it if they have taken possession. A loss so caused is not an inevitable or direct consequence of the mischief by fire It is only where mischief arises from fire (in fire insurance cases) and from perils of the sea (in marine insurance cases) and the natural and almost inevitable consequence of that mischief is to create further mischievous results that underwriters become responsible for the further mischief so incurred. *Montoya* v *London Assurance Company, 6 Ex 451, 458,* referred to *Per* BATCHELOR, *J*—The loss insured against is limited to the loss by fire (which includes the loss by water in extinguishing the fire) and cannot conveniently embrace all possible damages, however remote, which could by ingenuity be traced up to some connection with the fire as the ultimate *causa sine qua non* It is impossible to hold that damages arising from the alleged negligence of Insurance Companies while in possession are properly claimable in pursuance of the contract of insurance, for whereas this contract refers only to loss by fire, those damages would arise from an origin totally different and wholly distinct and separable from the fire, namely, a neglect of some duty imposed on the companies after the loss by fire or water had become an accomplished fact ATLAS ASSURANCE COMPANY, LIMITED *v.* AHMEDBHOY HABIBHOY (1908) **I. L. R. 34 Bom. 1**

INTENT TO CAUSE DEATH.

See MURDER . **I. L. R. 37 Calc. 315**

INTENTION.

See HIGH COURT I. L. R. 34 Bom. 378

INTEREST.

See CIVIL PROCEDURE CODE, 1882, s 257. 14 C. W. N. 146

See HANDNOTE . 14 C. W. N. 1100

INTERLOCUTORY ORDER.

See CIVIL PROCEDURE CODE (V OF 1908), O. XI, R 14 . 14 C. W. N. 147

INTERPLEADER.

——— *Landlord and Tenant—Civil Procedure Code (XIV of 1882), ss. 470, 471, 474, 578—Bengal Tenancy Act (VIII of 1885), s. 149.* An interpleader suit, with a prayer for declaration of the titles of the several sets of defendants in the disputed land, by the tenant against the landlords in whose favour he has executed separate *kabuliyats*, is not maintainable. SHELLEY BONNERJEE *v.* RAJ CHANDRA DATTA (1910) I. L. R. 37 Calc. 552

IRREGULARITY.

See DEMOLITION OF BUILDING. I. L. R. 37 Calc. 585

See RECEIVER . . 14 C. W. N. 560

See SALE FOR ARREARS OF REVENUE. I. L. R. 37 Calc. 407

ISSUES.

See LIBEL . I. L. R. 37 Calc. 760

J

JAINS.

See HINDU LAW—ADOPTION. I. L. R. 32 All. 247

See HINDU LAW—INHERITANCE. I. L. R. 33 Mad. 439

JOINDER OF PARTIES.

See JURISDICTION. I. L. R. 34 Bom. 13

JOINT CONVICTION.

See JOINT PENALTY. I. L. R. 37 Calc. 895

——— *Joint Penalty—Calcutta Municipal Act (Beng. III of 1899), ss. 444 and 574—Disobedience of order under s. 444 (2) by two persons.* The owner and an occupier of a house in Calcutta were jointly convicted of disobedience of an order under s. 444 of the Calcutta Municipal Act, and a joint penalty of fine was imposed upon them :—*Held*, that the joint conviction and the joint penalty were illegal, each of the accused being guilty of a separate offence. BHAIRAB CHANDRA KOLAY *v.* CORPORATION OF CALCUTTA. (1910) . . . I. L. R. 37 Calc. 895

JOINT EXECUTANTS.

See ATTESTATION I. L. R. 37 Calc. 526

JOINT FAMILY.

See CIVIL PROCEDURE CODE, 1882, s. 234. I. L. R. 32 All. 404

See CONTRACT ACT (IX OF 1872), s. 68. I. L. R. 32 All. 325

See HINDU LAW—ALIENATION. I. L. R. 32 All. 575

See HINDU LAW—JOINT FAMILY. I. L. R. 32 All. 183, 253, 415

JOINT FAMILY PROPERTY.

See HINDU LAW—JOINT FAMILY 14 C. W. N. 221

JOINT INQUIRY.

——— against members of a gang—
See SECURITY FOR GOOD BEHAVIOUR. I. L. R. 37 Calc. 91

JOINT PENALTY.

——— *Joint conviction, legality of—Calcutta Municipal Act (Beng. III of 1899), ss 444 and 574—Disobedience of order under s. 444 (2) by two persons.* The owner and an occupier of a house in Calcutta were jointly convicted of disobedience of an order under s. 444 of the Calcutta Municipal Act, and a joint penalty of fine was imposed upon them :—*Held*, that the joint conviction and the joint penalty were illegal, each of the accused being guilty of a separate offence. BHAIRAB CHANDRA KOLAY *v.* CORPORATION OF CALCUTTA (1910) . I. L. R. 37 Calc. 895

JOINT POSSESSION.

See LANDLORD AND TENANT I. L. R. 37 Calc. 687

JOINT TRIAL.

——— Secret society—Waging war—*Penal Code, ss 121 to 123* Where the accused were all alleged to have been members of a secret society, with its head-quarters in Maniktolla in the suburbs, and its places of meeting in Calcutta and elsewhere, and to have joined in the unlawful enterprise, and with others, known and unknown, to have conspired to wage war or to deprive the King of the sovereignty of British India, and to have collected arms and ammunition with such intent and to have actually waged war :—*Held*, that the joint trial of the accused on charges under ss. 121, 121A, 122 and 123 of the Penal Code was not bad for misjoinder of persons or charges. BARINDRA KUMAR GHOSE *v.* EMPEROR (1909) I. L. R. 37 Calc. 467

JUDGMENT.

See LETTERS PATENT, 1865, CL. 15. I. L. R. 34 Bom. 1

JUDGMENT-DEBTOR.

See CIVIL PROCEDURE CODE, 1882, s. 295. I. L. R. 33 Mad. 465

See PRE-EMPTION I. L. R. 34 Bom. 567

JURISDICTION OF CIVIL COURTS.

See JURISDICTION.

See INDIAN TRUSTS ACT (II OF 1882), SS. 5 AND 6 . I. L. R. 34 Bom. 467

See REGULATION II OF 1827.
I. L. R. 34 Bom. 455

See TITLE, SUIT FOR.
I. L. R. 37 Calc. 662

1. ——— **Aden Act (II of 1864), ss. 8 and 15**—*Court-fees Act (VII of 1870), s. 7, sub-s 4, cls. (c) and (d)—Suits Valuation Act (VII of 1887), s. 8—Civil Procedure Code (Act XIV of 1882), s. 551—Civil Procedure Code (Act V of 1908), s. 115—Valuation for the purposes of Court-fees and jurisdiction—Suit for declaration and injunction—Rejection of plaint as not properly stamped—Appeal—Application to state a case to High Court—Summary dismissal of appeal—Application for revision* The plaintiff brought a suit in the Court of the Assistant Resident at Aden for a declaration of heirship and an injunction with reference to certain property of the value of upwards R50,000. The claim being for declaration and injunction was, under the provisions of the Court-fees Act (VII of 1870), s. 7, sub-s. 4, cls. (*c*) and (*d*), valued by the plaintiff at R130 upon which the prescribed Court-fee stamp was R10 only. The Assistant Resident rejected the plaint on the ground that it was not properly stamped. Against the order of the Assistant Resident the plaintiff appealed to the Resident at Aden, and on the 23rd September 1908 presented an application under s. 8 of the Aden Act (II of 1864) to state a case to the High Court upon certain questions specified in the application. The Resident, however, on the next day, that is, on the 24th September, summarily dismissed the appeal under s. 551 of the Civil Procedure Code (Act XIV of 1882) The judgment dismissing the appeal was read out to the plaintiff on the 7th October following, when she attended the Court. The plaintiff, thereupon, preferred an application for revision to the High Court praying that the order dismissing the appeal might be quashed and that the Resident be required to state a case. A question having arisen as to whether the High Court had jurisdiction to interfere in revision with any order passed by the Resident in the exercise of his Civil jurisdiction under the Aden Act (II of 1864): *Held*, that with regard to questions which might arise regarding cases to be stated by the Resident for the decision of the High Court under the provisions of s. 8 of the Aden Act (II of 1864) the Resident's Court is subordinate to the High Court. Under s. 15 of the Aden Act (II of 1864) as the Court of the Resident is to be guided by the spirit and principle of the laws and regulations in force in the Presidency of Bombay and administered in the Courts of that Presidency not established by Royal Charter and in the High Court in the exercise of its jurisdiction as a Court of Appeal from those Courts, the provisions of the Suits Valuation Act (VII of 1887) are 'the law for the time being for the valuation of claims' in the Courts of the Resident of Aden. *Held*, further, that the plaintiff's claim being valued at R130 according to the law for the valuation of claims for the time being in force and according to the rulings of the Bombay High Court, it did not fulfil the requirements of s. 8 of the Aden Act (II of 1864) so as to give the plaintiff a right to demand the statement of the case upon any question of fact or law arising in the suit. RHIMBAI JAMALBHOY *v.* MARIAM BINTE ABDUL (1909)
I. L. R. 34 Bom. 267

JURISDICTION OF CIVIL COURTS—*contd.*

2. ——— **Appellate decree passed without jurisdiction**—*High Court bound to set aside such decree* Where a small cause suit is tried by a Munsif on the original side and his decision is reversed on appeal, the High Court is bound to set aside the appellate decree as having been passed without jurisdiction. *Parameshwaran Nambudri* v *Vishnu Embrandiri, I. L. R. 27 Mad. 478*, dissented from. *Ramasamy Chettiar* v. *Orr, I. L R 26 Mad. 176*, approved. *Shankarbhai* v. *Somabhai, I L R. 25 Bom 417*, approved. KOLLIPARA SEETAPATHY *v* KANKIPATI SUBBAYYA (1909)
I. L. R. 33 Mad. 323

3. ——— **Suit for land**—*Letters Patent, cl. 12—Suit in which decree is asked for operating directly on land, is a suit for land* A suit which prays for any relief with reference to any specific immoveable property is a suit for land within the meaning of cl. 12 of the Letters Patent. Where in a suit for maintenance the plaintiff prays that the amount may be charged, not on the ancestral property generally, but on specific land, the suit is a suit for such land within the meaning of cl. 12 of the Letters Patent SUNDARA BAI SAHIBA *v.* TIRUMAL RAO SAHIB (1909)
I. L. R. 33 Mad. 131

4. ——— **Letters Patent, cls. 12, 14**—*Cause of action arising partly within jurisdiction—Further cause of action arising wholly outside jurisdiction—Joinder—Time of application.* An application under cl. 14 of the Letters Patent to join a further cause of action arising wholly outside the jurisdiction, can be made in a case in which leave to sue has to be obtained under cl. 12; nor is there anything in cl 14 to show that this application must be made before the plaint is filed. There is nothing to prevent the plaintiff making the application at any time before the hearing, but it would certainly be advisable for him to make it at the time the plaint is presented. JOHN GEORGE DOBSON *v.* THE KRISHNA MILLS, LTD. (1910)
I. L. R. 34 Bom. 564

5. ——— **Practice**—*Presidency Small Cause Courts Act (XV of 1882), s. 22—Suit cognizable by Small Causes Court brought in High Court—Non-joinder—Contract of sale made subject to rules of Rice Merchants Association—Rule ousting jurisdiction of Court of law—Rule providing for fixing varda rate of goods for purpose of ascertaining differences in case of non-fulfilment of contract—Suit by buyer for damages for non-delivery—Plea that no damages recoverable*

JURISDICTION OF CIVIL COURTS—*contd.*

having regard to rate fixed—Allegation by plaintiff that rate fixed was not binding inasmuch as the rules were not observed—Construction of rules—Principal and agent—Agent's power to bind his principal to arbitration—Indian Contract Act (IX of 1872), s 93—Sale—Tender The Bombay United Rice Merchants Association was a commercial body of which most of the principal rice merchants in Bombay were members Its rules were printed and circulated and they prescribed a certain form of contract which was very generally used in Bombay By these rules a Sub-Committee was nominated "to decide all disputes which may arise as to contracts and do all other business relating to contracts" It was also provided that the "exclusive authority" to decide all such disputes should be the said Sub-Committee and the Association and that no party should be at liberty to go to Court with respect to any matter connected with such contracts except to enforce the decision of the Sub-Committee and the Association. It was further provided that the Sub-Committee should keep a record of the daily rates and on the last day of the *vaida* should fix the *vaida* rate (*i.e.*, the market rate of the day) on the basis of which differences should be calculated which became payable in cases in which contracts were not carried out. The plaintiffs who were rice merchants in Rangoon were not members of the Association, but they employed agents in Bombay, who were members, to purchase rice for them and on the 24th November 1906 these agents bought from the defendants 1,340 bags of rice at R9 per bag deliverable at the *vaida* of Magshir Sud 1963 (*i.e.*, from the 18th November 1906 to 30th November 1906) The contract which was in the printed form framed under the rules as above-mentioned contained the following clause:—"This contract is made subject to the rules of the Bombay United Rice Merchants Association. Each party is bound to act in accordance with the same." For delivery at this *vaida* a large number of the members of the Association had made contracts of sale The plaintiffs and a few others were purchasers and they were apprehensive that in settling the *vaida* rate the interests of the buyers would be disregarded in favour of those of the sellers. They accordingly wrote to the President of the Association calling upon him to see that no interested person was allowed to act on the Sub-Committee for fixing the *vaida* rate. In accordance with the practice a general meeting of the Association was held on the 30th November 1906 at which after discussion a special Sub-Committee was appointed to fix the rate consisting only of three persons, one of whom was not a member of the standing Sub-Committee and another of whom had large contracts of sale due at this *vaida*. This Sub-Committee fixed the rate at R8-11-0 per bag. The plaintiffs alleged that it should have been fixed at R9-2-0 or R9-4-0 per bag which was the real market rate of the day; that the rate fixed was dishonestly fixed in the interest of sellers; that the Sub-Committee was not constituted according to the rules, two members of it being ineligible, one because he did not belong to the standing Sub-Committee and the other because he was interested in fixing a low rate, and they contended that for these reasons (*inter alia*) they were not bound by the rate fixed They had duly demanded delivery of the rice contracted for and the defendants failed to give delivery and the plaintiffs now sued for the difference between the contract price (R9) and the market price on the 30th November 1906. The sum claimed as damages was less than R1,000. The defendants pleaded—(i) That having regard to s. 15 of the Civil Procedure Code (Act XIV of 1882) and s. 18 of the Presidency Small Cause Courts Act (XV of 1882) the suit was not maintainable in the High Court (ii) That certain alleged partners of the plaintiffs not being parties to the suit it should be dismissed for non-joinder (iii) That having regard to the rules of the Association which provided a remedy in case of disputes among its members and forbade their going to law, the plaintiffs were precluded from suing at law at all events until they had exhausted the remedies provided by the rules. (iv) That the plaintiffs were bound by the *vaida* rate fixed by the Sub-Committee appointed by the Association *Held*, (i) that the High Court had jurisdiction and that the suit should proceed subject to the provisions as to costs contained in s 22 of the Presidency Small Cause Courts Act (XV of 1882) (ii) That the alleged partnership was proved, but nevertheless the suit could not be dismissed for non-joinder (iii) That the plaintiffs were entitled to sue at law notwithstanding the provisions contained in the rules of the Association requiring all disputes to be submitted for decision to the Association and restricting the right of members to sue each other. (iv) That at the meeting of the Association held on the 30th November 1906 the plaintiffs (through their agents) had consented to the appointment of a Sub-Committee of three persons to fix the *vaida* rate and that they were therefore bound by the rate then fixed. Any stipulation that the award of an arbitrator shall be accepted as final restricts the rights of contracting parties to invoke the aid of the ordinary Courts and to that extent is void. The effect of s. 28 of the Indian Contract Act (IX of 1872), s 21 of the Specific Relief Act (I of 1877), read with the related sections of the Indian Arbitration Act (IX of 1899) and the Civil Procedure Code dealing with arbitration, is that a person may not contract himself out of his right to have recourse to Courts of law but that in the event of any party having made a lawful agreement to refer a matter of difference to arbitration as a condition precedent to going to law about it, the Courts will recognise the agreement and give effect to it by staying proceedings in the Courts. MULJI TEJSING *v.* RANSI DEVRAJ (1909) . . **I. L. R. 34 Bom. 13**

6. _____ Suit for share in produce of immoveable property—*Provincial Small*

JURISDICTION OF CIVIL COURTS—*concld.*

Cause Courts Act (IX of 1887), ss 16, 27, 32, Sch. II, Clas (2) and (3)—Suit for the recovery of certain sum representing a share in the produce of immoveable property—Cognizance by the Court of Small Causes—Decree final—Appeal. A suit for the recovery of R12-11-6 representing plaintiff's share in the produce of immoveable property is a suit for money had and received to the plaintiff's use and is cognizable by the Court of Small Causes and the decree in such a suit is final under s. 27 of the Provincial Small Cause Courts Act (IX of 1887) Notwithstanding its finality an appeal was preferred to the District Court of Ahmedabad, which Court entertained the appeal and reversing the decree allowed the plaintiff's claim. The defendant, thereupon, preferred a second appeal and at the hearing prayed that the second appeal might be treated as an application for revision under s 115 of the Civil Procedure Code (Act V of 1908), on the ground that the District Court acted without jurisdiction in entertaining the appeal The respondent (plaintiff) urged that a second appeal lay and further that by reason of the conduct of the parties and the fact that the appellant (defendant) had not objected to the jurisdiction of the District Court, it was too late in second appeal to take the point. *Held*, that the District Court had no jurisdiction to try the case and the conduct of the parties could not give it jurisdiction. *Ledgard* v. *Bull, L. R. 13 I. A. 134*, and *Meenakshi Naidoo* v *Subramaniya Sastri, L. R. 14 I. A 160*, referred to Decree of the District Court reversed and that of the first Court restored DAVLATSINHJI (MAHARANA SHRI) *v.* KHACHAR HAMIR MON (1909)
I. L. R. 34 Bom. 171

JURISDICTION OF CRIMINAL COURTS.

See COGNIZANCE OF AN OFFENCE.
I. L. R. 37 Calc. 467

See EMIGRATION . **I. L. R. 37 Calc. 27**

See JURY, RIGHT OF TRIAL BY.
I. L. R. 37 Calc. 467

1. _____ **Practice**—*Order directing prosecution for instituting a false case—False information to the police—Subsequent complaint before the Magistrate—Grounds of the exercise of such jurisdiction—Criminal Procedure Code (Act V of 1898), ss. 195 (b) and 476.* S. 476 of the Criminal Procedure Code must be read subject to the restrictions contained in s. 195 (*b*), and does not, therefore, empower a Court to direct a prosecution for making a false charge before the police. *Dharmadas Kawar* v. *King-Emperor, 7 C. L J. 373*, followed. *Lalji Gope* v. *Gridhari Chaudhury, 5 C. W. N. 106*, referred to. *In re Devji, I. L. R 18 Bom. 581; Akhil Chandra De* v. *Queen-Empress, I. L R. 22 Calc. 1004; Abdul Rahman* v. *Emperor, 7 C L. J. 371*, and *Haibat Khan* v. *Emperor, I. L. R. 33 Calc. 30*, distinguished. But if the informant, upon the police reporting the information to be false, subsequently petitions the Magistrate for a judicial inquiry, he must be taken to have preferred a complaint, and s. 476 would then apply. *Queen-Empress* v. *Sham Lall, I L. R 14 Calc 707; Queen-Empress* v. *Sheik Beari, I. L. R. 10 Mad. 232*, and *Jogendra Nath Mookerjee* v *Emperor, I L R. 33 Calc. 1*, referred to No sanction should be granted or prosecution directed, unless there is a reasonable probability of conviction, though the authority granting a sanction under s 195, or taking action under s 476, should not decide the question of guilt or innocence. Great care and caution are required before the Criminal law is set in motion, and there must be a reasonable foundation for the charge in respect of which a prosecution is sanctioned or directed. *Ishri Prosad* v. *Sham Lal, I. L. R. 7 All 871; Kali Charan Lal* v *Basudeo Narain Singh, 12 C. W N. 3*, and *Queen* v *Baijoo Lal, I L. R 1 Calc. 450*, referred to. Where there had been prolonged litigation between the petitioner and the opposite party, in which the former had been successful, so that the case was by no means improbable, and two Magistrates had in the course of the judicial investigations preceding the trial, accepted the prosecution story as substantially true, and the Assessors had only found the case not proved:—*Held*, that, under the circumstances, it was not a proper case for a prosecution under s. 476 of the Code. JADU NANDAN SINGH *v.* EMPEROR (1909) . . . **I. L. R. 37 Calc. 250**

2. _____ *Jurisdiction of Magistrate—Cognizance on information received by him in another public capacity—Legality of the institution of criminal proceedings in such case—Criminal Procedure Code (Act V of 1898), s. 190 (1) (c) Held per* STEPHEN, *J.* (CARNDUFF, *J*, *dubitante*), that a Magistrate who has received information in another public capacity, *e g*, as manager of an encumbered estate, of the offence of mischief by cutting timber from the estate forest, cannot act on it in his capacity of a Magistrate and initiate criminal proceedings under s. 190 (1) (*c*) of the Criminal Procedure Code. *Thakur Pershad Singh* v. *Emperor, 10 C W. N. 775*, referred to. An order, on taking cognizance of a case under s 426 of the Penal Code, directing the attachment of trees, the subject of the alleged offence, is without jurisdiction. LAKHI NARAYANA GHOSE *v* EMPEROR (1910) . . . . **I. L. R. 37 Calc. 221**

JURY, RIGHT OF TRIAL BY.

_____ *Interference with the right—Governor-General in Council, powers of—Indian Councils Act (24 & 25 Vic., c. 67), s. 22 proviso—European British subject, rights of—Waiver—Order of Local Government authorising complaint of certain offences—Commitment on charge for other offences—Jurisdiction, want of—Local Government, powers of—Delegation of powers*

JURY, RIGHT OF TRIAL BY—*contd.*

—Charges against members of a secret society—Misjoinder—Same transaction—Confessions, admissibility of—Confessions made during police investigation and to Magistrate subsequently holding inquiry—Examination of accused—Eliciting statements by questions—Admissions to the police—Handwriting, modes of proof of—Comparison of Handwriting—Leading questions—Criminal Procedure Code (Act V of 1898), ss 164, 196, 235, 239, 342, 364, 447, 454, 532—Evidence Act (I of 1872), ss 21, 25, 29, 47, 67, 73—Waging war—Conspiracy to wage war—Penal Code (Act XLV of 1860), ss 121, 121A The Criminal Procedure Code, in so far as it interferes with the mode of trial by Jury, is not *ultra vires* under the proviso to s 22 of the Indian Councils Act (24 & 25 Vic , c. 67) *King-Emperor* v. *Kartik Chandra Dutt*, (1909) unreported, followed *In the matter of Ameer Khan, 6 B L R 392 and 459*, approved. An European British subject can, under s. 454 of the Code, relinquish his right to be dealt with as such Where the Magistrate explained to such a person the nature of the charges framed against him, and his rights under ss 447 and 450, and then asked him whether he claimed to be dealt with as such, and the latter stated that he did not claim the right .—*Held*, that he had relinquished his right. *In re Quiros, I L R. 6 Calc. 83, Queen-Empress* v *Grant, I. L R 12 Bom. 561, Queen-Empress* v *Bartlett, I L. R 16 Mad 308*, followed Where an order under s 196 of the Criminal Procedure Code authorized a particular police officer to prefer a complaint of offences under ss 121A, 122, 123 and 124 of the Penal Code, "*or under any other section of the said Code which may be found applicable to the case*," and the examination of the complainant also referred to the same sections :—*Held*, that no complaint under s. 121 of the Penal Code was thereby authorized by the Local Government or in fact preferred, that the Magistrate had no power to commit thereunder, and that the defect was not cured by a subsequent order obtained while the case was before the Sessions Court, authorizing a complaint under the section which was not in fact made thereafter; nor did s. 532 of the Criminal Procedure Code apply in such a case. *Sham Khan's case, (1890) Punj R Cr J. No. 16*, approved *Queen-Empress* v. *Morton, I. L. R. 9 Bom. 288*, distinguished; and *Queen-Empress* v. *Bal Gangadhar Tilak, I. L. R 22 Bom. 112*, dissented from. The Local Government cannot delegate to any other body or person the controlling power and discretion of determining whether cognizance shall be taken by the Court of an offence mentioned in s. 196 of the Criminal Procedure Code, and its judgment must be specially directed to the particular section, and no other, under which the prosecution is to be carried on, and the order or authority should be preceded by a deliberate determination in this respect. An order authorizing a complaint under certain specified sections "*or under any other sections found applicable*," if it means found by any one other than Government,

JURY, RIGHT OF TRIAL BY—*contd.*

involves a delegation which cannot be sustained. Where the accused were all alleged to have been members of a secret society, with its head-quarters in Maniktolla in the suburbs, and its places of meeting in Calcutta and elsewhere, and to have joined in the unlawful enterprise, and with others, known and unknown, to have conspired to wage war or to deprive the King of the sovereignty of British India, and to have collected arms and ammunition with such intent and to have actually waged war :—*Held*, that the joint trial of the accused on charges under ss. 121, 121A, 122 and 123 of the Penal Code was not bad for misjoinder of persons or charges. A confession under s 164 of the Criminal Procedure Code must be made either in the course of an investigation under Chapter XIV or after it has ceased and before the commencement of the inquiry or trial. The condition requiring the confession to be prior to the commencement of the inquiry or trial is only imposed when the investigation has ceased, and not when it is made in the course of the police investigation Where a number of persons were arrested on the 1st May, and the confessions of some of them were recorded on the 4th and 5th, while others were brought in subsequently and their confessions taken while the police investigation was then actually going on, and on the 17th an order under s 196 was obtained and the police report sent in, and on the next day, the examination of the prosecution witnesses begun :—*Held*, that the Magistrate did not take cognizance under s. 190 of the Code, nor did the inquiry commence on the 4th, and that the confessions were taken in the course of an investigation under Chapter XIV. The fact that the Magistrate who has taken the confessions, afterwards holds the inquiry, does not, under s. 164, constitute the recording of the confessions an examination of the accused in the course of it and at its commencement. *Empress* v. *Anuntram Singh, I L R. 5 Calc. 954*, and *Empress* v. *Yakub Khan, I L. R 5 All. 253*, declared obsolete *Sat Narain Tewari* v. *Emperor, I. L R 32 Calc 1085*, distinguished. S. 164 includes confessions taken by a Magistrate who afterwards holds such inquiry or trial. *Empress* v. *Anuntram Singh, I. L. R 5 Calc. 954*, and *Reg* v. *Bai Ratan, 10 Bom H. C. 166*, declared obsolete on the point Ss. 164, 342 and 364 of the Code are not exhaustive, and do not limit the generality of s. 21 of the Evidence Act as to the relevancy of admissions. *Queen-Empress* v *Narayen, (1893) Ratan Lal Unrep Cr. C. 679*, referred to The mere fact that a statement was elicited by a question does not make it irrelevant as a confession under s 164 of the Criminal Procedure Code or s. 29 of the Evidence Act, though such fact may be material on the question of its voluntariness Methods of proving handwriting discussed A document does not prove itself nor is an unproved signature proof of its having been written by the person whose signature it purports to bear. S. 73 of the Evidence Act does not sanction the comparison of any two documents, but re-

JURY, RIGHT OF TRIAL BY—*contd.*

quires, first, that the standard writing shall be admitted or proved to be that of the person to whom it is attributed; and, secondly, that the disputed writing must *itself purport* to have been written by the same person. A comparison of handwriting is at all times, as a mode of proof, hazardous and inconclusive, and especially so when made by one not conversant with the subject and without guidance from the arguments of counsel and evidence of experts. *Phoodee Bibee* v *Govind Chunder Roy, 22 W R 272,* referred to The value of expert evidence of handwriting discussed *Reg.* v *Harvey, 11 Cox C C. 546,* referred to. To constitute an admission, the document need not be written by the party against whom it is used: it is sufficient if it is found in his possession and his conduct thereto creates an inference that he was aware of its contents and admitted their accuracy, but, unless this is done, the document cannot be used against him as proof of its contents What conduct would properly give rise to such inference depends on the facts of each case The mere fact of possession of letters is not of much value, unless it is shown that their contents were recognized and adopted by the replies elicited or the conduct inspired by them The expression "*wages war*" in s. 121 of the Penal Code must be construed in its ordinary sense, and a conspiracy to wage war, or the collection of men, arms and ammunition for that purpose, is not waging war An agreement between two or more persons to do all or any of the unlawful acts mentioned in s 124A of the Penal Code is an offence, and the fact of the purpose not being immediate is only material in connection with s 95. No proof is necessary of direct meeting or combination, nor need the persons be brought into each other's presence; but the agreement may be inferred from circumstances raising a presumption of a common concerted plan to carry out the unlawful design Nor is it necessary that all the accused should have joined in the scheme from its inception. Eliciting answers from witnesses while under examination-in-chief or re-examination, by leading questions, deprecated. *Per* CARNDUFF, *J* —Regard being had to the definition of "proved" in s. 3 of the Evidence Act, "moral conviction," provided it is based exclusively on evidence that is admissible, is not distinguishable from "legal proof" Save when an accused person is being examined under s. 342 of the Criminal Procedure Code, there is nothing to prevent a Magistrate from eliciting information from him by independent enquiry so long as the information is voluntarily given A statement by an accused to the police, which tells against him but does not amount to an admission of guilt, is admissible in evidence. Each case must be decided as it arises with reference to the question whether the particular statement is or is not a confession. *Queen* v. *Macdonald, 10 B. L. R. App. 2, Empress* v *Dabee Pershad, I L. R. 6 Calc. 530, Queen* v. *Amir Khan, 9 B. L R. 36, 72,* a nd *Emperor* v. *Mahomed Ebrahim, 5 Bom. L. R. 312,*

JURY, RIGHT OF TRIAL BY—*concld*

referred to *Queen* v *Hurribole Chunder Ghose, I. L. R 1 Calc 207, Queen-Empress* v. *Mathews, I L. R 10 Calc 1022, Queen-Empress* v. *Meher Ali Mullick. I. L. R 15 Calc. 589, Imperatrix* v. *Pandharinath, I L. R. 6 Bom 34,* and *Queen-Empress* v. *Javecharam, I. L. R. 19 Bom. 363,* discussed and distinguished. Handwriting may, in addition to the usual methods, be proved by circumstantial evidence under s. 67 of the Evidence Act, which prescribes no particular kind of proof. *Neel Kanto Pandit* v. *Juggobundhoo Ghose, 12 B L R App. 18, Abdool Ali* v. *Abdoor Ruhman, 21 W. R 429,* and *Abdulla Paru* v. *Gannibai, I. L R. 11 Bom. 690,* referred to BARINDRA KUMAR GHOSE *v* EMPEROR (1909) **I. L. R. 37 Calc. 467**

K

KABULIYAT.

See TRANSFER OF PROPERTY ACT, s. 105.
14 C. W. N. 73

——— *Kabuliyat, construction of—Rent, partly in money and partly in kind—Fixed rent—Evidentiary value of later documents between different parties in construing an earlier one.* Where the terms of a document clearly point to the fact that the rent is to be partly in money and partly in kind, the rent cannot be regarded fixed in amount, even though the *kabuliyat* is a *mokarrari* one, and in the original deed the two items of rent in kind and rent in cash were lumped up and expressed as a consolidated money-rent. An earlier document cannot be construed by reference to a later document which is not between the same parties. BANESWAR MUKHERJI *v.* UMESH CHANDRA CHAKRABARTI (1910) . **I. L. R. 37 Calc. 626**

KAIMI LEASE.

See LANDLORD AND TENANT.
I. L. R. 37 Calc. 815

KAMATHIS.

See HINDU LAW—INHERITANCE.
I. L. R. 34 Bom. 553

"KHARACH-I-PANDAN."

See MAHOMEDAN LAW—MARRIAGE.
I. L. R. 32 All. 410

KHAS POSSESSION.

——— **suit for—**

See CHOWKIDARI CHAKRAN LANDS.
I. L. R. 37 Calc. 57

KHATEDAR.

——— **inamdar's name entered as—**

See LAND REVENUE CODE (BOM. ACT V OF 1879), ss 3 (11), 217.
I. L. R. 34 Bom. 686

L

LAMBARDAR.

——— **Ejectment, suit for**—*Central Provinces Land Revenue Act (XVIII of 1881), ss. 112, 138.* A lambardar is only a representative of the proprietary body of a mehal in its relations with Government, and is not entitled alone to bring a suit for ejectment. NILMANI GOUNTIA *v.* JOGENDRA GOUNTIA (1910)

I. L. R. 37 Calc. 694

LAND ACQUISITION ACT (I OF 1894).

1. ——— **Compensation**—*Valuation of residential property—Elements to be considered—Evidence before Acquisition Officer—Practice* The income of a property whether actual or imaginary is no doubt one of the recognised starting points for a valuation, but it is a mistake to think that it is the only element to be taken into consideration. In the case of residential property, to endeavour to arrive at the market value solely, on the basis of an hypothetical rent may work grave injustice to the owner. There are commodities which may possess a value in the market not for the return they give on capital invested but for the advantages and enjoyment which accrue from their possession. Residential property, in the sense of property which a purchaser wishes to acquire for his own residence, is such a commodity. The first question to determine is whether there is a demand, and if there is a demand the original cost is the most important element for consideration It is the duty of legal practitioners attending before the Acquisition Officer to assist him in arriving at a valuation by putting before him all the information and materials at their disposal. *In the matter of* LAND ACQUISITION ACT *In the matter of* GOVERNMENT AND SUKHANAND (1909)

I. L. R 34 Bom. 468

2. ——— "*Land*"—*Acquisition of outstanding interest where Government owns fee-simple. Per* CHANDAVARKAR, *J*—To acquire a land [Sc. under the Land Acquisition Act] is not necessarily the same thing as to purchase the right of fee-simple to it, but means the purchase of such interests as clog the right of Government to use it for any purpose they like. The definition given to the word "land" in s. 3 (*a*) of the Act is not exhaustive.... The use of the inclusive verb "includes" shows that the Legislature intended to lump together in one single expression—*viz*, "land"—several things or particulars, such as the soil, the buildings on it, any charges on it, and other interests in it, all of which have a separate existence and are capable of being dealt with either in a mass or separately as the exigencies of each case arising under the Act may require. *Per* BATCHELOR, *J*.—Government are not debarred from acquiring and paying for the only outstanding interests merely because the Act, which primarily contemplates all interests as held outside Government, directs that the entire compensation, based upon the market value of the whole land, must be distributed among the claimants. In such circumstances there is no insuperable objection to adapting the procedure to the case on the footing that the outstanding interests, which are the only things to be acquired, are the only things to be paid for. *In the matter of the* LAND ACQUISITION ACT. THE GOVERNMENT OF BOMBAY *v.* ESUFALI SALEBHAI . . . **I. L. R. 34 Bom. 618**

LAND ACQUISITION ACT (I OF 1894)—*contd.*

——— **s. 18.**

See COMPENSATION.

I. L. R. 34 Bom. 486

See PRACTICE . **I. L. R. 34 Bom. 486**

See VALUATION OF RESIDENTIAL PROPERTY.

I. L. R. 34 Bom. 486

——— **s. 23—Valuation of land**—*Compensation—Market value of land—Valuation by "belts."* The Government acquired land on the banks of the Hughly The owners objected to the Collector's award The Special Judge, on reference, determined the amount of compensation by basing his calculations on a system of dividing the land into belts On appeal the High Court rejected the Special Judge's method of valuation and upon a careful consideration of previous awards and prices realised on sales of land in the neighbourhood and other matters, increased the amount *Held*, on the appeal of the Government to His Majesty in Council, that the argument based on the great experience of the Special Judge in such cases amounted to a denial of the right of the High Court to review his findings. The judgment of the High Court which gave due weight to the evidence in the case was affirmed. SECRETARY OF STATE FOR INDIA *v.* THE INDIA GENERAL STEAM NAVIGATION AND RAILWAY CO., LD. (1909)

I. L. R. 36 Calc. 967; 14 C. W. N. 134

——— **s. 32—Widow's estate**—*Purchaser of widow's estate, if may withdraw compensation money—Refund of money withdrawn, power of Court to order—Investment of compensation money.* A widow's estate in a property was sold without any legal necessity and purchased by the defendant. Subsequently the land was acquired under the Land Acquisition Act and the defendant withdrew the compensation money. In a suit by the reversioners for a declaration that they were not bound by the sale to the defendant and for a deposit of the money in Court for investment in Government securities: *Held*, that the defendant could be compelled to refund the money into Court for the purpose of investment and the Court has authority to give directions for proper investment of the money in the interest of the reversioners in accordance with the rules of justice, equity and good conscience in the absence of any statutory power. S. 32 of the Land Acquisition Act applies to Hindu widows who hold possession of property as limited owners. *Sheo Ratan* v. *Mohri, I. L. R. 21 All. 354; Sheo Prasad* v. *Jaleha, I. L R. 24 All. 189*, followed. *Mahammad Ali* v. *Ahammed Ali*,

LAND ACQUISITION ACT (I OF 1894) —*concld.*

——— s. 32—*concld.*

I. L. R. 26 Mad. 286, distinguished. Till the money passes into the hands of a person absolutely entitled thereto there is constructive reconversion of it into land. S 32 makes it reasonably clear that although an owner may be deprived of the land for the sake of public purposes, the Legislature intended that the protection enjoyed by reversionary heirs when land is in the hands of limited owners should not, by reason of the acquisition alone, be completely withdrawn Cases of this kind where land has been compulsorily converted into money stand on a different footing from cases where a Hindu widow inherits moveable property, and the law applicable to the latter case does not apply to the former. *Quære:* Whether the Land Acquisition Court could compel refund of the money improperly withdrawn in violation of s. 32. *Nobin Kali* v. *Banalata, I. L. R. 32 Calc. 921; Gobinda Rani* v. *Brinda Rani, I. L. R. 35 Calc 1104: s.c. 12 C. W. N. 1039*, referred to. MRINALINI DASI *v.* ABINASH CHANDRA DUTT (1910)
14 C. W. N. 1024

LAND FOR AGRICULTURAL PURPOSES.

See BOMBAY LAND REVENUE CODE, s 48.
I. L. R. 34 Bom 239

LANDLORD.

See SPECIFIC RELIEF ACT, ss 9, 42.
I. L. R. 33 Mad 452

——— right of—

See CHAUKIDARI CHAKRAN LAND.
I. L. R. 37 Calc. 598

LANDLORD AND TENANT.

See AGRA TENANCY ACT (II OF 1901), SS. 74, 75, 76 . **I. L. R. 32 All. 458**

See CHOWKIDARI CHAKRAN LANDS.
I. L. R. 37 Calc. 57

See INTERPLEADER.
I. L. R. 37 Calc. 552

LANDLORD AND TENANT—*contd.*

1. BUILDING AND RESIDENTIAL LEASE.

——— *Building and Residential Lease—Heritability—Transferability—Transfer of Property Act (IV of 1882), s. 108 (j).* Where there is a lease for building and residential purposes, in the absence of any intention to the contrary, indicated either in the terms of the grant or in the nature of the tenancy, the leasehold interest is heritable, and the tenancy does not determine by the death of the lessee, but vests in his legal personal representatives who are entitled to give or receive the usual notice to quit. Such a tenancy, in the absence of any custom or contract to the contrary, is governed by the provisions of the Transfer of Property Act, and is consequently *primâ facie* transferable under s. 108 (*j*) of that Act. KISHORILAL ROY CHOWDHURY *v* KRISHNA-KAMINI CHOWDHRANI (1910) . . **I. L. R. 37 Calc. 377**

2. CUSTOM.

——— *Rights of tenant occupying a house in the abadi—Custom—Evidence—Nature of evidence requisite to prove custom—Second appeal.* The High Court, in second appeal, has jurisdiction to consider the evidence given in support of an alleged custom and to determine whether or not that evidence is sufficient in point of law to establish the custom set up. *Hashim Ali* v. *Abdul Rahman, I L. R. 28 All 698*, and *Ram Bilas* v. *Lal Bahadur, I. L R 30 All 311*, followed. GIRRAJ SINGH *v.* HARGOBIND SAHAI (1909)
I. L. R. 32 All. 125

3. EJECTMENT.

——— *Suit for ejectment—Denial of landlord's title—Forfeiture.* Where defendant in a suit for rent by the plaintiff, his landlord, had denied his title and claimed to hold under a third party: *Held*, that in a suit by the landlord for ejectment of the defendant as a trespasser the defendant was debarred from pleading his tenancy and claiming to hold possession on that ground. *Nilmadhab Bose* v *Ananta Ram Bagdi, 2 C. W. N. 755; Fayj Dhali* v *Aftabuddin Sirdar, 6 C. W. N. 575; Ramgati Mohurer* v. *Pranhari Seal, 3 C. L. J. 201; Khater Mistri* v. *Sadruddi Khan, I. L. R. 34 Calc. 922*, followed *Mallika Dassi* v *Makham Lal Chowdhry, 9 C. W N. 928*, distinguished. SHEIK MAIDHAR *v.* RAJANI KANTA RAY (1909)
14 C. W. N. 339

4. ENHANCEMENT OF RENT.

1. ——— **Waiver**—*Enhancement of rent—Bengal Tenancy Act (VIII of 1885), ss. 43, 108—Chur lands—Right of Occupancy.* *A* took a lease of a certain Government *khas mehal* and executed a *kabuliat* in favour of the Collector by which he (*A*) covenanted not to raise the rents of raiyats beyond the amounts mentioned in the settlement

LANDLORD AND TENANT—*contd.*

4. ENHANCEMENT OF RENT—*concld.*

jamabundi. The tenants, however, subsequently agreed to pay rent at an enhanced rate on the ground that the fertility of the land had been increased Upon a suit for arrears of rent at the enhanced rate against the teannts, the defence was that *A* was bound by the *kabuliat* executed in favour of the Collector, and as such he was not entitled to a decree at the rate claimed: *Held*, that, inasmuch as the tenants voluntarily agreed to an enhancement of rent, they deliberately waived the benefit of the said covenant, and they could not impeach the validity of their own agreement on this particular ground. *Zamir Mandal* v *Gopi Sundari Dasi*, *I L. R. 32 Calc 463 (note)*, referred to. Under s. 180 of the Bengal Tenancy Act, a raiyat holding a *chur* land, but who has not acquired a right of occupancy, is liable to pay such rent for his holding as may be agreed on between him and his landlord, irrespective of the provisions of s 43 of the Act JAHANDAR BAKSH MALLIK *v.* RAM LAL HAZRAH (1910) **I. L. R 37 Calc. 449**

2. ——— **Rent-in kind**—*Enhancement of rent by addition of a rent-in-kind—Bengal Tenancy Act (VIII of 1885), s 29* S 29 of the Bengal Tenancy Act applies even where a money-rent is enhanced by the addition of a rent in-kind. KISHORI MOHUN BOSE *v.* SHEIKH UJIR (1910) **I. L. R. 37 Calc. 610**

3. ——— **Prevailing rate of rent**—*Occupancy raiyats—Enhancement of rent—Proof of rise in price of staple food-crops, how ascertained and Court's duty in the matter—Prevailing rate for similar land in same or neighbouring villages with same advantages—Bengal Tenancy Act (VIII of 1885), ss. 29, 30, 32, 39.* In a suit for enhancement of rent under s. 30 of the Bengal Tenancy Act, it is the duty of the Court to refer to the price lists prepared under s. 39, whether the parties to the suit produce these or not. It is right and proper that the Civil Court, in directing a local investigation under s. 31 (*b*), should indicate to the officer holding the investigation what it is that the Court precisely requires Where the Court is satisfied that all the rent in the village should be excluded from consideration in finding out the prevailing rate in the village, because it is fixed in a mode which contravenes the provisions of s. 29 of the Bengal Tenancy Act, then an enquiry should be directed which will bring to light the pervailing rate of rent paid by occupancy *raiyats* for lands of a similar description and with similar advantages in the neighbouring villages. NABIN CHANDRA SHAHA *v.* KULA CHANDRA DHAR (1910) **I. L. R. 37 Calc. 742**

5. LEASE.

1. ——— **Trees**—*Kaimi lease—Lease created before the Transfer of Property Act (IV of 1882)—*

LANDLORD AND TENANT—*contd.*

5. LEASE—*contd.*

Trees planted after lease—Right of removal of trees by tenant—Fixtures, doctrine of—Bengal Tenancy Act (VIII of 1885), s. 23—Transfer of Property Act (IV of 1882), ss 2, 108 (h) In the absence of any special provision in a lease granted before the Transfer of Property Act (IV of 1882) came into force, the property in the trees planted by the lessee after a *kaimi* lease had been granted does not vest in the landlord. The rule laid down in s 108, cl (*h*) of the Transfer of Property Act (IV of 1882) has no application to such a case. The lease in the present case not being for agricultural or horticultural purpose, s 23 of the Bengal Tenancy Act has no application The doctrine of the English Law of Fixtures cannot be appropriately extended to this country on equitable grounds. *Bain* v *Brand, 1 App. Cas 762; Mears* v *Callender, [1901] 2 Ch. 388; Elwes* v *Maw, 2 Smith's Leading Cases 189 ; 3 East 38; Ness* v *Pacard, 2 Peters 137*, referred to The Law of Fixtures is not recognized under the Hindu or Mahomedan laws. *Thakoor Chunder Paramanick* v. *Ramdhone Bhuttacharjee, 6 W. R. 228; B L. R F. B 595. Secretary of State* v. *Charlesworth Pilling & Co., I. L. R 26 Bom. 1, Khodeeram Serma* v *Trilochun, 1 Mac. Sel. Rep. 35; Jankee Singh* v. *Bukhooree Singh, (1856) Beng S. D. A. 761, Pogose* v *Nyamutoollah, (1858) Beng S. D. A. 1517, Brij Bhookun* v. *Dabee Dyal, (1863) 2 Agra S D A 480, Kalee Pershad Dutt* v *Gouree Pershad Dutt, 5 W R. 108*, relied upon Before the passing of the Transfer of Property Act, the doctrine of the English Law of Fixtures did not prevail in this country, and the provisions of that Act substantially reproduced the law on this subject as recognised by Hindu and Mahomedan jurisprudence *Ismai Kani Rowthan* v. *Nazaroli Sahib, I. L R 27 Mad. 211*, referred to. MOFIZ SHEIKH *v.* RASIK LAL GHOSE (1910) . **I. L. R. 37 Calc. 815**

2 ——— **Sarbarakari jamai lease**—*Construction—Intermediate tenure if can be created between proprietary and putni interests.* Where a pottah recited that a *sarbarakari jamai* settlement had been taken from the zemindar at a certain annual rental and continued "I hereby confer upon you all the powers I had to realise the rents, etc, payable by the *putnidars*. . . . By virtue of these powers you shall be competent to sue those *putnidars* in my behalf and using my name. . . . I have executed *am-muktearnamahs* in your favour . . . lest your applications . . . be not accepted by the Collector." *Held*, upon a construction of the pottah, that it did not create any interest in land as that of a tenure-holder but only a personal obligation between the grantor and the grantee. *Semble:* A zemindar cannot create a permanent tenure between his own interest and *putni* taluk of the first degree. BIBI JARAO KUMARI SAHABA *v.* HANIFUDDIN AKAND (1909) . **14 C. W. N. 389**

LANDLORD AND TENANT—*contd.*

5. LEASE—*concld.*

3. ——— **Mokurari pattah, construction of**—*Conflict between area and boundaries—Landlord and tenant.* It is only when the boundaries of a land can be ascertained with perfect certainty that an intention to convey all lands comprised within those boundaries can be inferred; if the boundaries are uncertain the intention should be taken to be to convey the specified quantity of land within those boundaries: *Held*, upon a construction of the *patlah* in the case, that the dimensions specified were an essential part of the description of the land conveyed and not a cumulative description of it which was to be governed by the boundaries. *Held*, further, that in the circumstances of the case the intention should be inferred to have been to pass the specified quantity of land only *Daniel Herrick* v *Garret Sirby*, *L R 1 P. C A 436 Mellor* v *Walmesley*, [*1905*] *2 Ch. 164*, referred to. KUMAR RAMESHAR MALIA *v* RAMTARAK HAZRA (1909) . . **14 C. W. N. 288**

6. MINERAL RIGHTS.

——— *Permanent tenure of an agricultural character—Underground rights not mentioned in lease—Minerals under surface of land—Rights of Zemindar—Onus of proof—Transfer of Property Act (IV of 1882), ss 108, 117.* The question for decision in this case, whether certain Goswamis, the sebaits of an idol and lessees of a village in the zemindari of the appellant, the Rajah of Pachete, had under their lease, which had been granted by a predecessor in title of the appellant about 60 years ago, acquired any rights to the minerals beneath the surface of the village which they could have transmitted to the respondents who claimed to hold under them There was no document or evidence defining the terms of the lease to the Goswamis. Two decrees in favour of the Rajah for the payment of an annual rent of ₹22-15-6 by the Goswamis were put in, in one of which they were described as "cultivators" and in the other as "britti-holders." There was no evidence whatever that the Rajah had ever granted mineral rights in the village to the Goswamis or to any other person. Both the Courts in India found that the village was a *mal* (rent-paying) village of the zemindari of the Rajah, and that no prescriptive right had been proved by the respondents to any underground rights in the village. The High Court held that the zemindar had created a permanent tenure of an agricultural character, and that the tenure-holder would possess all underground rights in the absence of express reservation by the zemindar. *Held*, by the Judicial Committee (reversing that decision), that the title of the zemindar Rajah to the village being established, he must be presumed to be the owner of the underground rights appertaining thereto in the absence of evidence that he had parted with them, and no such evidence had been produced. Field's Bengal Regulations, Introduction, page 36, referred to.

LANDLORD AND TENANT—*contd.*

6. MINERAL RIGHTS—*concld.*

In the case of leases under the existing law of 1882 (the Transfer of Property Act, IV of 1882, s. 108), no right arises for a lessee to work mines not open when the lease was granted HARI NARAYAN SINGH DEO *v* SRIRAM CHAKRAVARTI (1910) **I. L. R. 37 Calc. 723**

7. RENT

1. ——— **Presumption of permanency of rent**—*Record-of-Rights—Bengal Tenancy Act (VIII of 1885), as amended by Bengal Acts III of 1898 and I of 1903, ss 50, 105, 115* When an application is made under s 105 of the Bengal Tenancy Act, as amended by Bengal Acts III of 1898 and I of 1903, for settlement of rent, after the final publication of the record-of-rights, the tenant is entitled, in view of the provisions of s 115 of the Bengal Tenancy Act, to the benefit of the presumption under s 50 of the same Act *Radha Kishore Manikya* v. *Umed Ali*, *12 C W. N 904*, approved *Secretary of State for India* v. *Kajimuddi*, *I. L R. 26 Calc. 617*, distinguished. PIRTHICHAND LAL CHOWDHRY *v* BASARAT ALI (1909) **I. L. R. 37 Calc. 30**

2. ——— **One suit for rent of different tenancies, if maintainable**—*Bengal Tenancy Act (VIII of 1885), ss. 20, 29, cls.* (a) *and* (b)—*Presumption under s 20 when arises—Effect of division of tenancy.* When there are several tenures held by the same tenant the landlord may institute one suit for the rent of all the tenures, but if he does so he cannot put the tenancies to sale in execution of the decree so as to enable the purchaser to avoid incumbrances. *Hridoy Nath Das* v *Krishna Prasad Sircar*, *I. L. R. 34 Calc 298 · s c 6 C L. J; 153 11 C W. N. 497; Baikanta Nath Roy* v. *Thakur Debendro Nath Sahi*, *11 C. W N 676 Nanda Lal* v. *Sadhu Charan*, *7 C. L. J 96; Bipra Das* v. *Rajaram*, *13 C W. N. 650*, referred to. No inflexible rule of law can be laid down that the division of a tenancy creates or does not create a new tenancy Whether it does or does not is a question of the intention of the parties to be decided on the evidence *Uday Chandra* v. *Nripendra Narayan*, *13 C. W. N. 410; Madhu Mala* v *Alfazuddi*, *13 C. W. N. 962*, referred to. MULLUK CHAND DASS *v.* SATISH CHANDRA DAS (1909) **14 C. W. N. 335**

3. ——— **Denial of lessor's right to sue**—*Estoppel. Held*, that a tenant who had taken a lease from one of several trustees was not competent to deny his lessor's right to sue alone for the rent. *Musammat Purnia* v *Torab Ally*, *3 Wyman 14*, and *Jamarayan Bose* v. *Kadimbini Dasi*, *7 B. L. R 723*, referred to KESHO DAS *v.* MAKSUDAN DAS (1910) . **I. L. R. 32 All. 213**

4. ——— **Suspension of rent**—*Substantial interference by landlord with enjoyment of holding by tenant—Tenant when entitled to suspension of rent—Bonâ fide interference, what is.* Where there is sub-

LANDLORD AND TENANT—*contd.*

7. RENT—*concld.*

stantial interference by the landlord with the tenant's enjoyment of his tenure even though there is no complete eviction, the tenant is entitled to suspension of rent for the period during which there was such interference *Kadumbini Dossia* v. *Kashee Nath Biswas, 13 W R 338; Dhunpat Singh* v *Kazim Ispahani, I L R 24 Calc 296; Harro Kumari* v *Purna Chandra, I L. R 28 Calc 188; Lalita Sundari* v *Surnomoyee Dasi, 5 C. W N. 353,* discussed *J* auction-purchased a *durputni* with power to annul incumbrances and served notice to quit on the *seputnidars* who refused to yield possession On *J* attempting to take forcible possession, criminal proceedings ensued as a result of which the *seputni* was attached under s 146 of the Criminal Procedure Code, on the 3rd October 1902. The land attached was subsequently let out to *ijaradar* who paid rent to the *putnidar* and deposited certain sums as *ijara* rent in the Collectorate. Some of these sums deposited were withdrawn by *J* as *dur-putnidar*. In 1906 the *seputnidars* obtained a decree establishing their *seputni* title and in pursuance of that decree withdrew some of the *ijara* rent that was deposited in the Collectorate. In a suit for rent by *J* against the *seputnidars* for the period during which the property was under attachment. *Held*, that the circumstances constituted substantial interference by the landlord with the tenant's enjoyment of his tenure such as disentitled him to recover rent for that period *Held*, on the facts of the case, that it was not such *bonâ fide* interference without prejudice to the tenant as would entitle the landlord to receive rent. *Ranee Surnomoyee* v. *Shooshee Mookhee, 12 Moo. I. A. 244,* distinguished. MAHOMED JEAULLYA MEAN *v.* SUKHEANNESSA BIBI (1910)
14 C. W. N. 446

8 RIGHT OF OCCUPANCY.

——————— *Occupancy right, extinguishment of—New occupancy right in the same holding—Acquisition of adverse rights in two capacities—Non-occupancy raiyat, if he can sub-let and create incumbrance—Bengal Tenancy Act (VIII of 1885), ss 22, cl. (2), 159, 160, cl. (g).* When an occupancy right is extinguished by the operation of s. 22, cl. (2) of the Bengal Tenancy Act, a new occupancy right cannot be acquired in the same tenancy by the co-sharer proprietor by whose action the occupancy right has ceased to exist. The owner of a holding cannot acquire a right adversely to himself in his other character as co-proprietor. A non-occupancy raiyat is a *raiyat*, and the land held by him is a 'holding'; s. 159 of the Bengal Tenancy Act applies to non-occupancy holdings also. A non-occupancy raiyat is not prohibited from sub-letting and may have an under-raiyat under him, and may create a protected interest under s. 160, cl. (g), if his landlord allows him so to do An incumbrance may be created by a non-occupancy raiyat on his holding, in limitation of his own interest, however limited, by way of sub-lease. RAM LAL SUKUL *v.* BHELA GAZI (1910) . . . . **I. L. R. 37 Calc. 709**

LANDLORD AND TENANT—*concld.*

8. RIGHT OF OCCUPANCY—*concld*

9. TRANSFER BY TENANT.

——————— *Transfer of a portion of a non transferable jote—Joint possession—Transfer, validity of.* The purchaser of a portion of a *raiyati jote* which is not transferable without the landlord's consent, and where there is no finding of such consent, is not entitled to have joint possession of the *jote*. It is open to tenants in occupation of a portion of the *jote* to question the validity of the transfer. AGARJAN BIBI *v* PANAULLA (1910)
I. L. R. 37 Calc. 687

10. MISCELLANEOUS.

1. ——————— **Representation, principle of**—*Decree against recorded tenants, effect of*—When the recorded tenant represents a holding on behalf of all his co-sharers, such holding passes by a sale in execution of a decree for arrears of rent obtained by the landlord against such tenant. *Ashok Bhuiyan* v *Karim Bepari, 9 C. W. N. 843,* discussed. JAGATTARA DASSI *v.* DAULATI BEWA (1909) . . **I L. R. 37 Calc. 75**

2. ——————— **Burgadar**—*Burgadar, if tenant —Suit for burga rent, if maintainable in Small Cause Court—Small Cause Courts Act (IX of 1887), Sch. II, cl. (8)* Settlement with a *burgadar*, under which he undertakes to cultivate the land for a half share of the produce, the remaining half going to the owner, does not by itself create the relation of landlord and tenant between the parties. A suit for recovery of the price of his share of the produce by the owner is maintainable in the Small Cause Court. KADE MANDAL *v.* AHADALI MOLLA (1910) . . . . **14 C. W. N. 629**

3. ——————— **Non-occupancy raiyat**—*Semble*: Whether a tenant who enters upon a land held under a *de facto* proprietor, can acquire a raiyati interest there in even though the *de facto* possessor ultimately turns out to be no real owner in case the tenant should have entered on the land in good faith. *Binad Lal* v *Kalu, I. L. R. 20 Calc. 708, Peary Mohun* v *Radhika Mohun, 8 C W. N. 315. s.c. 5 C L. J. 9,* referred to. Where a tenant has acquired the status of a non-occupancy raiyat in respect of any land, he is entitled to possession of land which has accreted to his holding. *Gour Hari* v. *Bhola, I. L. R. 21 Calc. 233; Beni Pershad* v *Chaturi, 4 C. L. J. 63. s.c. I. L R 33 Calc. 444; Amjad Ali* v. *Kaderjan, 13 C. W. N 269. s.c. 8 C. L. J. 537; Ahmed Bepari* v. *Tohi Mahomed, 13 C. W. N. 267: s.c. 8 C. L. J. 538; Mia Jan* v. *Akramali, 8 C. L. J. 541,* referred to. MADHU *v* SABAR ALI (1910)
14 C. W. N. 681

LANDLORD AND TENANT PROCEDURE ACT (BENG. VIII OF 1865).

See UNDER-TENURE, SALE OF.
I. L. R. 37 Calc. 823

LAND-REVENUE ASSESSMENT ACT (MAD. I OF 1876).

——— *Party driven to sue for separate registration not entitled to damages for refusal to register—Action for money had and received—Request when implied.* The alienee of a portion of an estate, who is driven to a civil suit to enforce separate registry, under Act I of 1876, all the parties to the alienation not consenting to the transfer, is entitled to recover only the costs of such suit and not any further damages. In an action to recover money paid by plaintiff for the defendant at his request, a request will generally be implied where the defendant has notice of the payment being made for him and does not dissent Where the circumstances show that the owner of property which is saved by another party knew that the other party was laying out his money in the expectation of being repaid, the inference of an understanding between the parties amounting in law to an implied contract will unhesitatingly be drawn. *Falcke* v *Scottish Imperial Insurance Company, 34 Ch. D. 249*, referred to. Where a portion of an estate is alienated and the vendor and vendee agree that the vendee should pay the vendor a certain amount as the vendee's share of *peshkash* on the portion, alienated, which amount is in excess of the amount ascertained on separate registry to be due on such portion, the vendor is *interested* in paying the *peshkash*, as he makes a profit in doing so and he can recover the amount so paid. NARAYANASWAMI NAIDU *v* VELLANKI SREENIVASA JAGANNADHA RAO (1909) . **I. L. R. 33 Mad. 189**

LAPSE TO MONASTERY.

——— **custom of—**

See HINDU LAW—SUCCESSION.
14 C. W. N. 191

LEADING QUESTIONS.

See JURY, RIGHT OF TRIAL BY.
I. L. R. 37 Calc. 467

LEASE.

See LANDLORD AND TENANT—LEASE.
See STAMP-DUTY.
I. L. R. 37 Calc. 629

See TRANSFER OF PROPERTY ACT, S. 105.
14 C. W. N. 73

1. ——— Solehnama—*Unregistered Solehnama, admissibility in evidence of—Registration Act (III of 1877), s. 17, cls (d) and (8).* A *solehnama*, by which no immediate interest in immoveable property is created, and whereby there has been no demise, does not amount to a 'lease' within the meaning of clause (*d*) of s 17 of the Registration Act, and is merely an agreement to create a lease on a future day. Such a document falls within clause (*h*) of s. 17 of the Indian Registration Act and is admissible in evidence without registration. PANCHANAN BOSE *v* CHANDI CHARAN MISRA (1910) . . **I. L. R. 37 Calc. 808**

2. ——— Multifarious document—*One lease with several parties concurring to it—Stamp Act (II of 1899), ss 5, 28 (3), 35, 57 (1).* The concurrence of several parties to one and the same lease does not make it a multifarious document within the meaning of s. 5 of the Stamp Act. The stamp-duty on such a lease is the same as on a conveyance for a consideration equal to the amount or value of the fine or premium for which the lease is granted. *In re* PARASEA COLLIERIES, LTD. (1910) . . . . **I. L. R. 37 Calc. 629**

3. ——— Letter containing all the elements of a lease, whether admissible in evidence without registration. *Payment of rent at a reduced rate on the basis of that letter, effect of—Conflicting descriptions of the subject-matter of a grant—Lessee not put in possession of specific area mentioned in the lease, effect of—Mistake of fact—Abatement of rent.* In a suit for rent at a certain rate, the lessee pleaded that by virtue of a letter addressed to him by the lessor, the latter was entitled to get rent only at a reduced rate. The letter contained a definition of the reduced rental, recited the area of the land demised under the lease, the nature of the interest granted by the lease, and the instalments in which rents were payable . *Held*, that the letter being a non-testamentary instrument which purported to limit in future a vested interest of the value of Rupees one hundred and upwards in immoveable property, was not admissible in evidence without being registered *Biraj Mohinee Dassee* v. *Kedar Nath Karmakar, I L. R. 35 Calc. 1010*, referred to. *Held*, also, that the mere fact that rent for some years had been received at the reduced rate did not bind the lessor to accept rent at that rate in future, inasmuch as, even if the letter had been treated as an agreement for reduction of rent, it was not enforceable in law, having been made without consideration. Where there are two conflicting descriptions of the subject-matter of a grant, or two conflicting parts of the same description, that which is the more certain and stable, and the least likely to have been mistaken or to have been inserted inadvertently, must prevail, if it sufficiently identifies the subject-matter *Newsom* v. *Pryerr's Lessee, 7 Wheaton U. S. 7*, referred to. But where these two elements—the boundaries and the quantity—are equally certain and exactly defined, or the boundaries are as precise and definite as the quantity is specific and exact, and there is gross divergency between the quantity specified and the quantity found to be included within the defined boundaries, preference should be given to that element of the description of the subject-matter which is more consistent with the intention of the parties to be collected from the other parts of the deed, illuminated, if necessary, by the surrounding circumstances and the subsequent conduct of the

LEASE—*concld.*

parties. *Lord* v *The Commissioners for the City of Sydney, 12 Moo. P. C 473, 14 Eng R. 991, White* v *Luning, 93 U S 514, Crogham* v *Nelson, 3 How U S 187*, and *Holmes* v. *Trout, 7 Pet. U S. 171*, referred to Where a lease is taken of a specific quantity of land within definite boundaries, both the lessor and the lessee being under a common mistake that such quantity exists within the boundaries, while in fact it is much less, there is no valid contract, and the parties are entitled to recession thereof, but the defendant has the option to affirm the contract, and hold the lease for the lesser quantity with proportionate abatement of rent. *Paget* v. *Marshall, 28 Ch D 255; Harris* v *Pepperell, 5 Eq 1*, and *Garrard* v *Frankel, 30 Beav 145*, referred to DURGA PRASAD SINGH *v* RAJENDRA NARAIN BAGCHI (1909)
I. L. R. 37 Calc. 293

LEAVE TO APPEAL.

See PRIVY COUNCIL . **14 C. W. N. 872**

LEGAL NECESSITY.

See HINDU LAW—ALIENATION BY WIDOW.
14 C. W. N. 895

LEGAL PRACTITIONER.

——— **duty of—**

See LAND ACQUISITION ACT (I OF 1894).
I. L. R. 34 Bom. 486

——— **Misconduct**—*Pleader—Cheating client out of the subject-matter of suit—Penalty—Removal from practice—Suspension.* Where it was found by the Chief Court, before whom the appellant practised as a pleader, that he had taken advantage of his position of trust in order to cheat his client out of the subject-matter of the suit and obtain it for himself, and on the appellant's application for a review of the finding, he instead of pressing it, deliberately admitted the charges made against him in the sense in which those charges were understood by the Judges: *Held*, that the Chief Court was amply justified in passing orders removing the appellant permanently from the list of pleaders on the ground of misconduct, and the subsequent order of the Court, upon the application for review, reducing the penalty to suspension from practice for three years went as far in the direction of mercy as it properly could go. *In the matter of* CHANDRA SINGH (1910)
14 C. W. N. 521

LEGAL PRACTITIONERS' ACT (XVIII OF 1879).

——— **ss. 12, 14**—*Muktear—Conviction of rioting—Liability to suspension from practice—Conviction if conclusive.* Two muktears who were parties to a proceeding under s. 145 of the Criminal Procedure Code, in the course of which a *chur*, the subject of the proceeding, was attached under s. 146 and placed in charge of a receiver collected a number of armed men who formed an unlawful assembly with a view to take forcible possession of the *chur*: *Held*, that, having regard to the character of the offence, an order under s. 12 of the Legal Practitioners Act could properly be passed against them That in such a proceeding it was not open to them to go behind their conviction by the Criminal Court and invite the Court to examine the facts with a view to showing that the conviction was erroneous. *In re Rajendra Nath Mukerjee, 26 I. A 242 s c I L R 22 All. 49, 3 C. W N. 736*, followed. But the Court in such a case will look into all the facts as found to determine the position of the persons concerned *In re* KALI PRASANNO BOSU CHAUDHURY (1910)
14 C. W. N. 1073

LEGAL PRACTITIONERS' ACT (XVIII OF 1879)—*concld.*

——— **ss. 12, 14**—*concld.*

——— **ss. 13, 14.**

See PRACTICE . **I. L. R. 37 Calc. 173**

LEGAL REPRESENTATIVE.

See BENGAL TENANCY ACT, 1885, SCH. III, ART 6 . . **14 C, W. N 971**

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), SS 244, 252, 647.
I. L. R. 34 Bom. 546

LESSEE.

See LESSOR AND LESSEE.

——— **liability of—**

See CITY OF BOMBAY MUNICIPAL ACT (BOMBAY ACT III OF 1888), S 305.
I. L. R. 34 Bom. 593

——— **liability of, to pay rent after transfer—**

See LESSOR AND LESSEE.
I. L. R. 37 Calc. 683

LESSOR AND LESSEE.

——— *Transfer by lessee—Liability of lessee to pay rent after transfer—Privity of estate—Transfer of Property Act (IV of 1882), s. 108* The duration of liability of a lessee to pay rent to the lessor lasts as long as his estate remains in his possession and no longer; and after an assignment of the lease, the privity of estate between him and the lessor ceases, and the assignee becomes liable for the rent. METHA *v* GADADHAR RAI (1910) . . . **I. L. R. 37 Calc. 683**

LETTERS OF ADMINISTRATION.

See COURT FEES ACT, S. 19-I (1).
I. L. R. 33 Mad. 93

See HINDU LAW—SUCCESSION.
I. L. R. 37 Calc. 214

See PROBATE . **I. L. R. 37 Calc. 224**

See PROBATE AND ADMINISTRATION ACT, SS. 50, 69 . . **14 C. W. N. 119**

LETTERS OF ADMINISTRATION— *concld.*

——————*Probate and Administration Act (V of 1881), ss 23, 64—Hindu, death of, leaving widow who survived over 30 years—Application for letters of administration when no estate left to be administered* It is no doubt not necessary for the Probate Court to decide what assets are likely to come to the hands of a petitioner for letters of administration, but it is also the duty of the Court in granting letters of administration to consider whether there is any estate whatever to be administered. *In the goods of Nursing Chunder Bysack, 3 C. W. N 635, Lakshmi Narain* v. *Nanda Rani, 9 C. L. J 116,* relied on. *Raghu Nath* v. *Pate Koer, 6 C W. N 345,* distinguished. Where the object of the litigation appeared to be not to administer the estate of the deceased (a Hindu, who had died so long ago as 1875 and was survived by his widow in possession till 1907) but really to obtain a declaration of heirship so as to fortify the successful party in any regular suit that may be instituted: *Held,* that no grant should be made, although objection on this ground was taken for the first time upon appeal from the order of the District Court granting letters of administration. LALIT CHANDRA CHOWDHURY *v* BAIKUNTHA NATH CHOWDHURY (1910) . . . . **14 C. W. N. 463**

LETTERS PATENT, 1865.

——————**cls. 12, 14**—*Cause of action arising partly within jurisdiction—Further cause of action arising wholly outside jurisdiction—Joinder—Time of application.* An application under cl. 14 of the Letters Patent to join a further cause of action arising wholly outside the jurisdiction, can be made in a case in which leave to sue has to be obtained under cl 12; nor is there anything in cl. 14 to show that this application must be made before the plaint is filed. There is nothing to prevent the plaintiff making the application at any time before the hearing, but it would certainly be advisable for him to make it at the time the plaint is presented. JOHN GEORGE DOBSON *v* THE KRISHNA MILLS, LTD. (1910)
I. L. R. 34 Bom. 564

——————**cl. 15**—*Order of Judge refusing to decide whether arbitrators are going beyond scope of their authority—"Judgment"—Appeal—Construction of submission to arbitration.* An order of a Judge dismissing a petition to revoke a submission to arbitration on the ground that the arbitrators are going beyond the scope of the reference is a judgment within the meaning of cl. 15 of the Letters Patent and as such is appealable Such an order compels a party to submit to the jurisdiction of arbitrators though he complains that no such jurisdiction exists. It decides a question of right, namely, whether or not he is by the terms of reference to arbitration deprived of his right at common law to have the dispute decided in the ordinary way in a Court of law. It goes to jurisdiction and is not passed as an exercise of discretion. ATLAS ASSURANCE COMPANY, LIMITED *v.* AHMEDBHOY HABIBBHOY (1908) . . **I. L. R. 34 Bom. 1**

LIBEL.

——————*Words defamatory per se—Imputation of criminal offence—Fair Comment—Privileged occasion—Hansard's Parliamentary Reports, admissibility of—Statement of Newspaper Correspondent—Evidence of bad character—Proceedings in Parliament—Evidence Act (I of 1872), ss 55, 57, 78 (2)—Malice—Plaintiff's political character—Deportation—Regulation III of 1818—Judicial notice—Issues—Reputation—Damages, assessment of* The expression "that the plaintiff has been guilty of tampering with the loyalty of the Punjab sepoys" amounts to an imputation that he has been guilty of an offence under ss. 124A and 131 of the Indian Penal Code, and is punishable with transportation for life. A fair comment on matter of public interest is not libel. *Merivale* v. *Carson, 20 Q. B. D 275,* referred to. *Per* HARINGTON, *J.* Imputing a criminal offence to a person is not fair comment, and that the fact that another person on a privileged occasion made a similar statement is no protection to the defendants. Publication of a fair and an accurate report of proceedings in Parliament is privileged even though the words are defamatory. *Wason* v. *Walter, L R 4 Q. B. 73,* referred to. A libel, which is privileged when it appears as the report of a speech in Parliament, is not privileged when it appears as the statement of a newspaper correspondent The proceedings of Parliament may be proved, under s. 78 (2) of the Evidence Act, by the Journals of the House of Commons or by copies purporting to be printed by order of the Government. Where the gist of the action was damaged to the plaintiff's character, the defendants were entitled to show that the plaintiff was a person whose reputation would not be damaged by a particular libel in question. The fact that the plaintiff was a man of considerable influence in the Punjab, and took part in a meeting calculated to influence the minds of the people against the Government, and that he was deported seven weeks after the meeting under a Regulation empowering the Government to take that step for the purpose of preserving a portion of His Majesty's dominions from internal commotion, should be taken into consideration in assessing the damages. In mitigation of damages, the defendants can give evidence of the plaintiff's bad character, but not evidence of rumours and suspicions of bad character. *Scott* v. *Sampson, 8 Q. B. D. 491,* referred to. *Per* WOODROFFE, *J.* Subject to certain well-known limitations, that which has probative force is evidence. The deportation of the plaintiff was evidence as throwing light on the character of his agitation previous thereto and as thus affecting damages. The presumption of regularity required that it should be assumed that the deportation appeared to Government to be necessary. When the presumption had operated to this extent, the fact presumed might itself form the basis of a further inference that what had appeared to be necessary had so appeared, because there was an actual cause in fact for such appearance The subject of 'judicial notice' discussed; and the meaning of s. 57 of the Evidence Act explained. Hansard is an appro-

LIBEL —*concld*

priate book of reference in case of Parliamentary debates. Fair comment is not a branch of the law of privileged occasion. The law as to fair comment stated. The Code requires that issues should be settled on the Original Side of the High Court Reputation includes both character and disposition, and disposition is not the less proven because it appears on the face of the facts deposed to by the plaintiff himself, or is a proper inference from those facts Assessment of general damages discussed The English cases which deal with the question of the revision of damages by the Court of Appeal have no application in this country where the jury system, with respect to which the English decisions have been given, does not prevail. "THE ENGLISHMAN," LTD *v* LAJPAT RAI (1910)
I. L. R. 37 Calc. 760

LICENSE.

See RAILWAYS ACT, S 7
I. L. R. 34 Bom. 252

LIEN.

See SOLICITOR'S LIEN FOR COSTS.
I. L. R. 34 Bom. 484

LIEUTENANT-GOVERNOR.

See BAIL . . **I. L. R. 37 Calc. 412**

LIMITATION.

See ADVERSE POSSESSION.
I. L. R. 32 All. 389

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), S. 54 . **14 C. W. N. 882**

See CIVIL PROCEDURE CODE (1882), S 230.
I. L. R. 32 All. 136

See LIMITATION ACT (XV OF 1877), S 19.
I. L. R. 32 All. 51

See LIMITATION ACT (XV OF 1877), S 19, SCH II, ARTS. 120 AND 148
I. L. R. 32 All. 33

See LIMITATION ACT (XV OF 1877), SCH II, ART. 85 . **I. L. R. 32 All. 11**

See LIMITATION ACT (XV OF 1877), SCH II, ARTS 91 AND 141.
I. L. R. 32 All. 392

See LIMITATION ACT (XV OF 1877), SCH. II, ARTS. 134, 148
I. L. R. 32 All 160

See LIMITATION ACT (XV OF 1877), SCH II, ART. 179 (4).
I. L. R. 32 All. 257

See LIMITATION ACT (IX OF 1908).

See MAINTENANCE GRANT.
I. L. R. 37 Calc. 674

See MORTGAGE . **I. L. R. 37 Calc. 790**

See PUBLIC DEMANDS RECOVERY ACT, S. 15 . . **14 C. W. N. 607**

See TRANSFER OF PROPERTY ACT (IV OF 1882), S 90 . **I. L. R. 34 Bom. 540**

LIMITATION—*contd.*

1. ——— **Endowment**—*Adverse possession —Dispute between senior and junior chelas as to succession to Hindu maths—Ekranama allotting one math to senior chela in perpetuity and the other to junior chela as adhikari—Suit instituted within twelve years from senior chela's death, but 27 years from date of ekrarnama—Hindu Law.* The mohant of the temple of a Hindu idol who was in possession of two *maths*, one at Bhadrak and the other at Bibisarai, died leaving two *chelas*, or disciples, between whom a controversy arose as to the right of succession to the *maths* and the property annexed to them The dispute was settled by an arrangement embodied in an *ekrarnama*, dated 3rd of November 1874, executed by the senior *chela* in favour of the junior *chela*, by which the *math* at Bhadrak was allotted in perpetuity to the senior *chela* and his successors, while the *math* at Bibisarai and the properties annexed to it were allotted to the junior *chela* (described therein as an *adhikari*) and his successors for the purposes connected with his *math*, subject to an annual payment of ₹15 towards the expenses of the Bhadrak *math*. Less than twelve years after the death of the senior *chela*, but considerably more than that period after the date of the *ekrarnama*, the appellant, the successor of the senior *chela*, brought a suit against the junior *chela* to recover possession of the properties annexed to the Bibisarai *math*, on the allegation that they were *debutter* property dedicated to the worship and service of the plaintiff's idol, and held by the respondent (representing the junior *chela*) as an *adhikari* in charge of the Bibisarai *math* and asserting it to be a *math* subordinate to the Bhadrak *math*.—*Held* (affirming the decision of the High Court), that the property dealt with by the *ekrarnama* was, prior to its date, to be regarded as vested not in the mohant, but in the idol, the mohant being only its representative and manager, and consequently that from the date of the *ekrarnama* the possession of the junior *chela*, by virtue of its terms was adverse to the right of the idol, and of the senior *chela* as representing that idol, and that the suit was barred by limitation DAMODAR DAS *v* LAKHAN DAS (1910)
I. L. R. 37 Calc. 885

2. ——— **Adverse possession against Crown**—*Party relying on title by adverse possession against Crown must prove 60 years' adverse possession—Burden of proof shifted on Crown by proof of adverse possession for shorter period.* A party who rests his title on possession adverse to the Crown must prove such possession for 60 years *Secretary of State for India* v. *Vira Rayan, I. L. R. 9 Mad. 175*, explained. Where lands have been notified as a reserved forest under the Madras Forest Act, a claimant desirous of establishing his title against the Crown by adverse possession must prove adverse possession for 60 years before the notification. Where adverse possession for a shorter period is proved, it lies on Government to show that it has a subsisting title, by showing that such possess on commenced within 60 years before such

LIMITATION—*concld.*

date. In this part of India, it is a well established rule of common law that waste land, not being the property of an individual or community belongs to Government Islands formed within 3 miles of the mainland vest in the Crown CHELIKANI RAMA RAU *v.* SECRETARY OF STATE FOR INDIA (1909)
I. L. R. 33 Mad. 1

LIMITATION ACT (XIV OF 1859).

——— **s. 1, cl. 15.**

See LIMITATION ACT (XV OF 1877), S 19, SCH II, ARTS 120 AND 148
I. L. R. 32 All. 33

LIMITATION ACT (XV OF 1877).

——— **ss. 5 and 7**—*Application to file an appeal in formâ pauperis—Delay in making the application—Minor applicant—Excuse of delay—Probate—Grant of probate—Question of title not affected by the grant —Res judicata—Civil Procedure Code (Act V of 1908), s. 11* A suit filed in *formâ pauperis* was decided on the 10th February 1908. An application for leave to appeal in *formâ pauperis* was presented to the High Court on the 13th April 1908; but as it was beyond time it was rejected On an application to excuse the delay, it was excused on the ground that the applicant having been a minor, s 7 of the Limitation Act, 1877, applied. At the hearing, it was objected that the application for permission to appeal in *formâ pauperis* must be treated as an appeal, and that s 5, and not s. 7 of the Limitation Act, applied to it. *Held*, overruling the contention, that whether the application was treated as falling under s 5 or under s. 7 of the Limitation Act, 1877, the result was the same. If it fell under s. 5, as an appeal, then under the second paragraph of that section, which applied to appeals, the Court had jurisdiction to excuse delay, after the period of limitation prescribed for the presentation of an appeal had expired If, on the other hand, it be treated as an application and fell under s. 7 of the Limitation Act, it was clearly within time and there was no need of excusing delay because the section provided that a minor could apply after he had attained the age of majority within a certain period The probate is conclusive only as to the appointment of executors and the validity and the contents of the will; and on the application for probate it is not the province of the Court to go into the question of title with reference to the property of which the will purports to dispose or the validity of such disposition. CHINTAMAN VYANKATRAO *v.* RAMCHANDRA VYANKATRAO (1910) . . **I. L. R. 34 Bom. 589**

——— **s. 8**—*Putni Regulation (Reg VIII of 1819), s. 14—Suit to set aside sale—All co-sharers if must sue jointly—Parties—Right of minor co-owner to sue separately—Limitation—Limitation Act (XV of 1877), s. 8, Sch. II, Art. 12—Ground of exemption from limitation if must be specified in plaint when plaintiff minor—Amendment—Civil Procedure Code*

LIMITATION ACT (XV OF 1877)—*contd.*

——— **s. 8**—*contd.*

(Act XIV of 1882), s. 54 The decision in *Jogeshwar Roy* v. *Raj Narain Mitter, I. L. R 31 Calc 195 : s c. 8 C W. N. 168*, did not lay down that under s 50 of the Civil Procedure Code (Act XIV of 1882), a plaintiff could not take advantage of any ground of exemption not set up in the plaint. Nor did it lay down that in no circumstances should the plaintiff who has omitted to set up such a ground be allowed to amend his plaint. When the plaintiff or all the plaintiffs is or are a minor or minors it is not usual for them to plead exemption from the law of limitation as prescribed by that section, So, too, where one or more of several plaintiffs is or are a minor or minors, if the provisions of s 8 of the Limitation Act (XV of 1877) apply, time would not have commenced to run against any of them and it would not be necessary to expressly claim exemption. One of several co-owners of a *putni taluk* can alone institute a suit to set aside a *putni* sale as contemplated by s. 14 of Reg VIII of 1819, provided the purchaser is made a party and the whole sale is sought to be set aside. *Annoda Persad Roy* v. *Erskine, 12 B. L. R 370*, referred to. S. 8 of the Limitation Act (XV of 1877) has no application to such a suit, and a minor co-owner would be entitled to bring such a suit even though the adult co-owners have allowed their right to be time-barred. GANGADHAR SARKAR *v* KHAJA ABDUL AJIJ NAWAB SALIMULLA BAHADUR (1909)
14 C. W. N. 128

——— **s. 8, Sch. II, Art. 179, expl. I**—*Limitation Act (IX of 1908), s 7—Minor decree-holders—Applications for execution by guardian—Attainment of majority by one decree-holder—Application by guardian takes effect in favour of all—Right of the major decree holder to give discharge to the judgment-debtor in respect of the judgment-debt* Two minor sisters, who were born in the years 1881 and 1887, obtained a decree against the defendants in May 1900 The minor decree-holders were represented by a guardian appointed by the Court. The said decree was confirmed by the High Court in appeal in March 1901. Subsequently the guardian presented applications for the execution of the decree in 1904, 1905 and 1906, and while the last application was pending the guardian died. Thereupon the decree-holders presented an application for execution as majors in 1908. The defendants contended that as the elder decree-holder had attained majority, the application by the guardian was, as to her, unauthorized and the execution of the decree was barred as against her. It was further contended that as the elder decree-holder could from the time of her attaining majority make an application and give a good discharge to the judgment-debtor for the decretal-debt without the concurrence of the minor, time had, therefore, run against both under s. 8 of the Limitation Act (XV of 1877) or s. 7 of the Limitation Act (IX of 1908) *Held*, that by reason of the first explanation of Art. 179 of the Limitation Act (XV of

LIMITATION ACT (XV OF 1877)—*contd.*

——— **s. 8**—*concld.*

1877) an application made by a representative of one of joint decree-holders takes effect in favour of all. Therefore, though the elder decree-holder, had attained majority, the applications made by the guardian as the next friend of the minor decree-holder took effect in favour of both. *Held*, further, that the contention under s. 8 of the Limitation Act of 1877 or s. 7 of the Limitation Act of 1908 was inconsistent with the decisions in *Govindram* v. *Tatia*, *I. L. R. 20 Bom 383*, and *Zamir Hasan* v. *Sundar*, *I. L. R. 22 All 199*, the applicability of which had not ceased owing to any change in the words of s 7 of the Limitation Act of 1908 MANCHAND PANACHAND *v* KESARI (1910)

I. L. R. 34 Bom. 672

——— **s. 12, Sch. II, Art. 152**—*Party applying for portions of the record, entitled to deduct time spent in obtaining them* Where a party appealing from the decree of a lower Court applies for copies of the judgment and decree at different times, the time which he is entitled to exclude in computing the period of limitation for such appeal is the aggregate of the periods required to grant the copies after the applications were made *Raman Chetty* v *Kadirvelu*, *8 Mad L J 148*, referred to and approved. SILAMBAN CHETTY *v* RAMANADHAN CHETTY (1909)

I. L. R. 33 Mad. 256

——— **s. 19**—*Limitation—Acknowledgment—Authority of managing partner to acknowledge a debt as due by the firm—Receiver* *Held*, that the manager of a firm who has power to borrow and repay money on behalf of the firm has power also to acknowledge a debt by either immediately giving a promissory note, or subsequently, upon an adjustment of accounts or in any other way in the course of business, making *bonâ fide* admissions in writing. *Held*, also that where in the course of a suit for dissolution of partnership a receiver has been appointed to discharge the debts and liabilities of the firm, the mere fact that a claim which was within time when made is not adjudicated upon by the Court until after the expiration of more than three years, does not render the claim a bad claim against the partnership assets. LALTA PRASAD *v.* BABU PRASAD (1909)

I. L. R. 32 All. 51

——— **s. 19, Sch. II, Arts. 120 and 148**—*Acknowledgment by widow in possession of husband's estate not binding on reversioner—Limitation—Act No. XIV of 1859 (Limitation), s. 1, cl. 15. Held*, that the widow and daughter of a mortgagee in possession as such of the mortgaged property are not competent to give an acknowledgment of the title of the mortgagor so as to save limitation, within the meaning of the Indian Limitation Act, 1877, in respect of a suit for redemption brought by the representative in interest of the original mortgagor against the reversioners. *Bhagwanta* v. *Sukhi*, *I. L. R. 22 All. 33*, and *Chhiddu Singh* v. *Durga Dei*, *I. L. R. 22 All. 382*, referred

LIMITATION ACT (XV OF 1877)—*contd.*

——— **s. 19**—*concld.*

to. *Held*, also, that, unless there is a distinct provision to the contrary, the validity of an acknowledgment set up by a plaintiff as saving limitation in his favour must be decided with reference to the law in force when the suit is brought, and not with reference to that in force when the acknowledgment was made. *Gurupadapa Basapa* v. *Virbhadrapa Irsangaga*, *I. L. R. 7 Bom. 459*, referred to. SHIB SHANKAR LAL *v.* SONI RAM (1909)

I. L. R. 32 All. 33

——— **s. 20**—*Payment of interest on behalf of minor by manager of a joint Hindu family, effect of—"Duly authorised Agent."* A payment of interest by the manager of a joint Hindu family consisting of himself and his minor brothers, is a payment by the "duly authorised agent" of the minors within the meaning of s 20 of the Limitation Act, 1877. SARADA CHARAN CHAKRAVARTI *v* DURGARAM DE SINGHA (1910)

I. L. R. 37 Calc. 461

——— **s. 22**—

See NEGOTIABLE INSTRUMENT.

I. L. R. 33 Mad. 115

See PARTIES . **I. L. R. 37 Calc. 229**

——— **ss. 22, 28**—*Civil Procedure Code (Act XIV of 1882), s. 31—Civil Procedure Code (Act V of 1908), Order I, Rule 9—Lands attached to vatan—Joint owners—Lease—Lease good till the death of the surviving joint owner—Gordon Settlement of 1864—Suit by representatives of one joint owner to recover possession—Representatives of the other joint owner joined as co-defendants with the representatives of the lessee—Plaintiff's claim allowed to the extent of their share—Appeal by plaintiffs and co-defendants claiming their share—Limitation—Treatment of co-defendants as co-plaintiffs—Amendment of plaint and decree* Certain lands attached to a vatan belonged jointly to two brothers *V* and *D*. In the year 1872 the lands were let by *V* under a perpetual lease which was attested by *D*. *D* predeceased *V* In the year 1905 within twelve years from the death of *V*, his representatives brought a suit for the recovery of the lands let by *V*. They sought to recover the entire lands on the ground of eldership The suit was brought against defendants 1*a*, 1*b* and 1*c* as the heirs of the mortgagee of the lessee (the original 1st defendant), against defendants 2 and 3 as the heirs of the lessee and against defendants 4 and 5 as the heirs of *D*. The heirs of defendant 1 and defendants 2 and 3 defended the suit on the ground, *inter alia*, of limitation, the suit not having been brought within twelve years from the date of the lease. Defendants 4 and 5 did not contest the plaintiffs' claim. The first Court allowed the plaintiffs' claim to the extent of their share, namely, a moiety on the ground that their claim to that extent was not time-barred. On appeal by the plaintiffs and defendants 4 and 5, the latter of whom in appeal claimed their share, namely, the other moiety, the

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 22—*concld.*

Appellate Court awarded the other moiety to defendants 4 and 5. On second appeal by the heirs of the mortgagee: *Held*, affirming the decree, that the whole claim was within time. A Vatandar is entitled to alienate vatan lands for the term of his natural life and his children although not separate in interest from him have no right to object to such alienation until after his death Where a lease of vatan property is effected by on joint owner with the consent of the other joint owner the time for the recovery of the vatan property from the lessee runs from the date of the death of the survivor of the joint lessors. Defendants 4 and 5 having sought to recover in appeal their share which they had not asked for in the first Court. *Held*, allowing their claim, that they being parties to the suit instituted within the twelve years during which their right to a share in the vatan property could be effectually determined, the Court must deal with the matter in controversy so far as regards the rights and interests of the parties actually brought before it by the institution of the suit. A party transferred to the side of the plaintiff from the side of the defendant is not a new plaintiff to whom the provisions of s. 22 of the Limitation Act (XV of 1877) apply. *Nagendrabala Debya* v *Tarapada Acharjee, I. L R. 35 Calc. 1065*, concurred in Plaint and decree of the lower Appellate Court amended by entering defendants 4 and 5 as co-plaintiffs NARSINH *v.* VAMAN VENKATRAO (1909) . . **I. L. R. 34 Bom. 91**

——— s. 23, Sch. II, Parts. 36, 115, 116—*Transfer of Property Act, ss. 76, 92—Mortgagor's right to compensation for property not delivered to him is based on a continuing obligation and time does not run till redemption—Time runs under Art. 36 of Limitation Act from date of tort and not from date of knowledge.* Under s 92 of the Transfer of Property Act, the mortgagor on paying the mortgage debt is entitled to be put in possession of the mortgaged properties and the obligation to do so is a continuing obligation on the mortgagee which cannot cease so long as the right of redemption is not barred. The right of the mortgagor under s 76 of the Transfer of Property Act to have accounts taken and to debit the mortgagee with the loss caused to the mortgaged property, is cumulative and does not take away the remedy under s. 92 of the Act. Where the mortgagee in possession who is bound by the terms of the mortgage-deed to pay the Government revenue due on the land neglects to do so and the mortgaged land is sold, a suit for compensation by the mortgagor, brought more than six years after such sale and less than six years from the date of the decree in the redemption suit brought by the mortgagor, is not barred under Arts. 115 and 116 of the Limitation Act read with s. 23 of the Act. The express covenant in the mortgage-deed by the mortgagee to pay the Government revenue only states in words the liability of the mortgagee under s. 76 of the Act and does not

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 23—*concld.*

curtail the general obligation of the mortgagee under the Act In suits for compensation for tort to immoveable property, the period of limitation prescribed in Art. 36 of Schedule II of the Limitation Act runs from the date of the tort and not from the time when the plaintiff has knowledge of such tortious Act SIVACHIDAMBARA MUDALIAR *v.* KAMATCHI AMMAL (1909) . **I. L. R. 33 Mad. 71**

——— Sch. II, Arts. 2, 61, 62, 120—*Limitation—Suit to recover from a Municipal Board money alleged to have been illegally levied as octroi duty—Municipal Board's powers of taxation.* A Municipal Board, in disregard of certain lawful orders of the Government of India, levied upon a Company trading within the municipal limits certain sums by way of octroi duty over and above what they were legally entitled to levy. *Held*, on suit by the Company to recover from the Board the sums so levied, that (i) the suit would lie, and (ii) that the suit was one for money had and received to the use of the defendant within the meaning of Art. 62 of the second Schedule to the Indian Limitation Act, 1877 *Morgan* v. *Palmer, 2 B & C. 729; 26 R. R. 537*, and *Neate* v. *Harding, 6 Exch. 349: 86 R R 328*, referred to. *Seth Karimji* v. *Sardar Kirpal Singh, Punj. Rec 1886, 283*, dissented from. RAJPUTANA MALWA RAILWAY CO-OPERATIVE STORES, LD. *v* THE AJMERE MUNICIPAL BOARD (1910) . . . **I. L. R. 32 All. 491**

——— Sch. II, Arts. 49, 145—*Where depositary refuses on demand to return thing deposited, Art. 145 and not Art. 49 applies* Where moveable property is deposited and the depositary on demand by the depositor refuses to return the thing deposited, the period of limitation applicable to a suit to recover such property is that provided in Art. 145 and not that in Art. 49 of the Limitation Act. The fact that the possession after demand and refusal is wrongful does not make Art. 49 applicable. *Obiter:* Where a thing is deposited for safe custody, the depositor has the right to demand the return of the thing at any time, although the deposit might have been for a term. GANGINENI KONDIAH *v.* GOTTIPATI PEDDA KONDAPPA NAIDU (1909) . . . **I. L. R. 33 Mad. 56**

——— Sch. II, Art. 85—*Limitation—"Current mutual account."* *Held*, that a "mutual" account within the meaning of Art. 85 of the second schedule to the Indian Limitation Act, 1877, is an account of dealings between two parties which are such as to create independent obligations in favour of one party against the other. *Ganesh* v. *Gyanu, I L. R. 22 Bom. 606*, and *Ram Pershad* v. *Harbans Singh, 6 C. L J. 158*, followed. *Bhawan Singh* v. *Tika Ram, All. Weekly Notes (1896) 186*, referred to. CHITTAR MAL *v* BIHARI LAL (1909) **I. L. R. 32 All. 11**

——— Sch. II, Arts. 89, 115—*Suit for accounts against collecting agent—No express stipu-*

LIMITATION ACT (XV OF 1877)—*contd.*

Sch. II, Arts. 89, 115—*concld.*

lation to account yearly. In the absence of an express contract that account should be rendered at the end of each year, a suit by a landlord for accounts against his collecting agent, is governed by Art 89 of Sch. II of the Limitation Act (XV of 1877). *Mati Lal Bose* v. *Amin Chand Chattopadhay, 1 C. L. J. 211,* distinguished. *Jogendra Nath* v *Deb Nath, 8 C W. N. 113,* and *Shib Chandra* v *Chandra Narain, I. L. R. 32 Calc 719,* followed. DEBENDRA NATH GHOSH *v* SHEIKH ESHA HUQ MISTRI (1908)

14 C. W. N. 121

Sch. II, Arts. 89, 115, 116, 132—*Suit against gomasta for account—Hypothecation of immoveable property to secure agent's liability—Limitation—Registered contract—Stipulation to furnish periodical accounts.* Ordinarily speaking, a suit by a principal against his agent for an account is governed by Art. 89 of the Limitation Act (XV of 1877) and the period is three years from either the demand for and refusal of such account or the termination of the agency. Where, however, there is a definite contract to account at the end of each year the appropriate Art. would be 115 as the contract would be broken by the failure of the agent to account at the end of each year. In either case, if the contract be registered, Art. 116 applies and the period is 6 years. *Mati Lal Bose v. Amin Chand Chattopadhay, 1 C. L J. 211,* relied on The fact that the agent had executed a *kabuliyat* whereby he had hypothecated certain immoveable properties to secure his liability would not after the nature of the suit so as to make Art. 132 of same Schedule applicable. JOGESH CHANDRA *v.* BENODE LAL ROY CHOUDHRY (1909)

14 C. W. N. 122

Sch. II, Arts. 91, 141—*Limitation—Suit to recover property sold by guardian during minority of plaintiff—Cancellation of sale deed ancillary—Decree for possession conditional upon restoring such portion of the consideration as was for the minor's benefit. Held,* that in the case of a suit to set aside an alienation of the plaintiff's property made during his minority by his guardian, the limitation applicable is that prescribed by Art. 141 of the second Schedule to the Indian Limitation Act, 1877. *Unni* v. *Kunchi Amma, I. L. R. 14 Mad 76,* followed. *Abdul Rahman* v. *Sukhdayal Singh, I. L. R. 28 All 30, Jhamman Kunwar* v. *Tiloki, I. L. R. 25 All. 435,* and *Ram Dei Kunwar* v. *Abu Jafar, I. L. R. 27 All. 494,* referred to. When, however, such a sale is in part for the benefit of the plaintiff, he is in equity liable to make good to the purchasers the portion of the consideration by which he benefited, and he would be entitled to recover the property only on condition of his paying to the purchasers that portion of the consideration. *Gobind Singh* v. *Baldeo Singh, I L. R 25 All. 330,* referred to. BACHCHAN SINGH *v.* KAMTA PRASAD (1910)

I. L. R. 32 All. 392

LIMITATION ACT (XV OF 1887)—*contd.*

Sch. II, Art. 95—

See PRINCIPAL AND AGENT.

I. L. R. 37 Calc. 81

Sch. II, Art. 98—

See HINDU LAW—FATHER'S DEBTS.

I. L. R. 33 Mad. 308

Sch. II, Art. 120—

See CIVIL PROCEDURE CODE, 1882, s. 103.

I. L. R. 33 Mad. 31

See HINDU LAW—INHERITANCE.

I. L. R. 34 Bom. 321

See MAHOMEDAN LAW—ENDOWMENT.

I. L. R. 37 Calc. 263

Vatan—Suit by reversioner for declaration as nearest heir—Widow of the last male holder—Vested right The right to sue for a declaration of heirship to a vatan does not accrue until the death of the widow of the last male holder of the vatan, the widow having a vested interest in it as the nearest heir. RAVJI VALAD MAHADU *v.* SAKUJI VALAD KALOJI (1909)

I. L. R. 34 Bom. 321

Sch. II, Arts. 120, 131—*Right of tenant to sue in respect of excess collections arises on every occasion when excess collection is made—Art. 120 and not Art. 131 of Sch. II of the Limitation Act applies to such suits.* A landlord had been collecting excess rents from his tenant from 1872. In respect of the excess collection made in October 1898, the tenant brought a suit in December 1909 for a declaration that the landlord was not entitled to collect such excess:—*Held,* that the right to sue for such declaration arose on each occasion the excess was collected; that the period of limitation was six years from the date of collection under Art. 120 of Sch. II of the Limitation Act, and that Art. 131 of the schedule did not apply to such suits. SRIMAN MADHABUSHI ACHAMMA *v* GOPISETTI NARAYANSAWMY NAIDU (1909 .

I. L. R. 33 Mad. 17

Sch. II, Arts. 131, 62—*Cash allowance—Tastik—Arrears of cash allowance, suit to recover.* The plaintiff, the manager of the temple of Shri Laxmi Narayan Dev at Hulekal, sued to recover from the defendants, the managers of the temple of Shree Madhukeshwar at Banawasi, a sum of R96 as arrears of a cash allowance (tastik) which the former was entitled to receive from the property of the latter. The defendants admitted the title of the plaintiff to the allowance but pleaded limitation as to the arrears for two out of the six years The lower Courts applied Art. 131 of the Limitation Act, 1877, and allowed the whole of the claim. On appeal: *Held,* that the claim was properly allowed. A cash allowance of the nature as in the present case is, according to Hindu law, *mibandha* or immoveable property; where it is annually payable the right to payment gives to the person entitled a

LIMITATION ACT (XV OF 1877)—*contd.*

——— Sch. II, Arts. 131, 62—*concld.*

periodically recurring right as against the person liable to pay. The right to any amount which has become payable stands as to such person on the same footing as the aggregate of rights to amounts which are to become payable and which have become actually due. But where there are more than one person entitled to the payment as co-sharer and the payment is made to one of them by the person liable to pay, the co-sharer receiving the amount holds it, minus his share, on behalf of the rest as money had and received for their use, though as to him with reference to the aggregate of rights, it is *nibandha* or immoveable property, in the nature of a periodically recurring right. The important question is who is the person sued and what is it that is sued for? If what is sued for is the establishment of a title to the right itself, then Art. 131 applies, whether the defendant is the person originally liable to pay or is a co-sharer who has received payment from that person. If, on the other hand, what is sued for is the amount of arrears, which has become actually payable to the plaintiff, then there is a distinction between the person originally liable to pay and a co-sharer of the plaintiff, who has actually received payment from that person. Art. 131 applies in that case to the person originally liable to pay, and Art. 62 applies to the co-sharer who has received the payment. SAKHARAM HARI *v.* LAXMIPRIYA TIRTHA SWAMI (1910) . . **I. L. R. 34 Bom. 349**

——— Sch. II, Arts. 132, 134, 148—

See MORTGAGE . . **14 C. W. N. 439**

——— Sch. II, Arts. 134, 148—*Mortgage —Redemption by one mortgagor—Nature of possession—Subsequent sale under another mortgage decree—Suit by another representative of mortgagor for redemption—Limitation.* *G*, in 1850, mortgaged certain property and died leaving a son, a daughter, and a widow. The son obtained a decree for redemption of the whole, which was sold to *M H*, *G M* and *A*, who redeemed the mortgage. After the passing of this decree *G's* son and widow mortgaged certain shares in the villages affected by the original mortgage, and in 1891 these shares were sold in execution of a decree for sale and purchased by *M H* and the representatives of *G M* and *A* *Held*, on suit by the representative of *G's* daughter to redeem her share, that Art. 148 and not Art. 135 of the second Schedule to the Indian Limitation Act, 1877, applied and the suit was not time-barred. SAID-UD-DIN KHAN *v.* RATAN LAL (1909) **I. L. R. 32 All. 160**

——— Sch. II, Art. 139.

See GRANT . **I. L. R. 37 Calc. 674**

——— Sch. II, Arts. 139, 144—*Suits against represenatives of deceased tenant governed by Art. 139 and not 144.* A suit against the representatives of a tenant after the determination of the tenancy to recover the property leased is governed by Art. 139 and not by Art. 144 of Sch. II of the Limitation Act. Such a suit would be barred against the representatives if it would be barred against the tenant if alive. *Vadapalli Narasimham* v. *Dronamraju Seetharama Murthy*, *I. L. R. 31 Mad 163, 167*, doubted. SUBBRAVETI RAMIAH *v.* GUNDALA RAMANNA (1909) **I. L. R. 33 Mad. 260**

LIMITATION ACT (XV OF 1877)—*contd.*

——— Sch. II, Arts. 139, 144—*concld.*

——— Sch. II, Art. 170.

See CIVIL PROCEDURE CODE, 1882, S. 234 **I. L. R. 32 All. 404**

1. ——— Sch. II, Art. 179—*Application against one judgment-debtor if saves limitation against other.—Civil Procedure Code (Act XIV of 1882), s 245.* An application for execution which conforms to the requirements specified in ss. 235, 236, 237 and 238 of the Civil Procedure Code and on which the Court permits execution is an application "in accordance with law" within the meaning of Art. 179 of Sch. II of the Limitation Act, 1877. Where a decree was for possession against one set of defendants, for possession through tenants against another set of defendants, and for costs and mesne profits against all the defendants and an application was made for execution of so much of the decree as related to costs against some of the defendants, but not against the others: *Held*, that a subsequent application for execution of the unsatisfied portion of the decree against those defendants against whom the previous application was not directed is not barred, if made within three years of the previous application. BARODA KINKER CHOWDHURI *v.* NABIN CHANDRA DUTTA (1909) **14 C. W. N. 465**

2. ——— Application for execution in accordance with law—*Decree—Execution—Execution made conditional upon payment of Court-fees—Application for execution without payment—Dismissal—Second application with payment.*—A decree was passed on the 30th June 1900 whereby partition of immoveable property was ordered; but the execution of the decree was made conditional on the payment of the proper Court fees. On the 29th June 1903 an application to execute the decree was made, but it was dismissed as it was not accompanied by payment. A second application to execute the decree was presented on the 27th June 1906; it was accompanied by payment. The lower Courts dismissed it on the ground that it was time-barred inasmuch as the first application made in 1903 was not one in accordance with law as required by Art. 179 of Sch. II to the Limitation Act, 1877. *Held*, that the first application was made in accordance with law, for, upon that application, it was competent for the Court to order that the execution should begin on the Court-fees being paid within a certain date. *Held*, further, that the second application was within time. *Per Curiam:*

LIMITATION ACT (XV OF 1877)—*contd.*

——— Sch. II, Art. 179—*contd.*

An application for execution of a decree to be in accordance with law must ask for something *within* the decree and not *outside* it NATHUBHAI KASANDAS *v.* PRANJIVAN LALCHAND (1909) **I. L. R. 34 Bom. 189**

3. ——— Step in aid of execution—*Civil Procedue Code (Act XIV of 1882), ss. 235, 238, 245—Application for execution returned for amendment of formal defect—Application amended but not refiled within time allowed and registered—Limitation—Limitation Act (XV of 1877), Sch II, Art. 179* Where an application for execution of a decree made in proper form under s. 235 of the Civil Procedure Code (Act XIV of 1882) was returned by the Court for supplying within 10 days the necessary extracts from the Collector's register under s. 238 regarding certain shares of a revenue-paying mouzah and a correct valuation of this and other properties sought to be attached, but the application was not refiled till long after the expiry of the 10 days, and some days after the period of limitation expired, and the decree-holder along with the application filed a petition explaining the delay and it was registered: *Held*, that the previous application which was returned was a step taken in aid of execution, such as would save the amended application from being barred by limitation. *Gopal Shah* v. *Janki Koer, I. L. R 23 Calc 217*, distinguished and explained. *Asgar Ali* v *Troilokya Nath Ghose, I. L. R. 17 Calc. 631; Kifayat Ali* v. *Ram Singh, I. L R 7 All. 359, Jiwat Dube* v. *Kali Charan Ram, I L. R. 20 All. 478; Gopal Chundra Manna* v. *Gosain Das Kolay, I. L. R. 25 Calc. 594;* referred to. That the decree-holders' application to the Collector for the extracts from the Collector's register was itself a step in aid of execution Proper scope of s. 245 of the Code indicated MATHURA PRASAD *v.* ANURAGO KOER (1910) **14 C. W. N. 481**

4. ——— *Step in aid of execution—Rejected application for adjournment to prove service of notice—Civil Procedure Code (Act XIV of 1882), s. 248.* An application for adjournment to enable decree-holder to adduce evidence of service of notice under s. 248, Civil Procedure Code, is an application made in order to obtain from the Court an order in furtherance of the execution of the decree. Such an application, even though it is refused, is a step in aid of execution. MOWAR NARSINGH DAYAL SINGH *v.* MOWAR KALI CHARAN SINGH (1909) . . . **14 C. W. N. 486**

5. ——— cl. 4—*Decree—Execution—Step-in-aid of execution—Applications for execution presented by assignee of decree-holder—Dismissal of the application for non-production of assignment deed.* A decree was passed on the 12th October 1894 and an application to execute it was made by the decree-holder on the 16th August 1897. The process fee not having been paid, the application was struck off. The second application to execute the decree was presented on the 16th August 1900 by the assignee of the decree-holder; but as he did not produce the assignment the application was struck off on the 27th October 1900 The third application was presented by a *mukhtear* of the assignee on the 11th August 1903; but as neither the assignment nor the *mukhtearnama* was produced it was struck off on the 9th October 1903. The same *mukhtear* presented a fourth application on the 19th December 1905. A notice was issued to the judgment-debtor under s 248 of the Civil Procedure Code (Act XIV of 1882) and the application was disposed of, the decree-holder agreeing to accept a payment of ₹45 from the judgment-debtor On the 11th December 1906, the fifth application to execute the decree was filed The lower Courts holding that the second and third applications could not be regarded as applications for execution made in accordance with law, dismissed the fifth application as barred by the law of limitation:—*Held*, that the present application was not barred, for the non-production of the *mukhtearnama* and the assignment did not prove that they did not exist in fact. *Abdul Majid* v. *Muhammad Faizullah, 13 All 89*, followed. VINAYAK VAMAN *v* ANANDA VALAD RAMJI (1909) . . **I. L. R. 34 Bom. 68**

6. ——— *Execution of decree—Limitation—Step in aid of execution—Civil Procedure Code, 1882, ss. 257A, 258—Application to certify payment made out of Court.* Although a decree under s. 83 of the Transfer of Property Act, 1882, may not be capable of adjustment under s. 257A of the Code of Civil Procedure, 1882, yet where the parties had professed to make such an adjustment, and, the judgment-debtor having paid certain instalments of the decretal money, the decree-holder had applied to the Court to have such payments certified under s. 258 of the Code, it was *held* that such applications operated to keep the decree alive, although at the time there might have been no application for execution actually pending. *Sujan Singh* v *Hira Singh, I. L. R. 12 All. 399*, followed. *Tarini Das Bandyopadhya* v. *Bishtoo Lal Mukhopadaya, I. L R. 12 Calc. 608*, referred to. CHHOTEY SINGH *v.* ISHWARI (1910) **I. L. R. 32 All. 257**

1. ——— Sch. II, Art. 180 An order in Privy Council affirming a decree of the High Court includes the directions in such decree; an application to enforce any such direction is in point of law an application to execute the order to the whole of which Art. 180 of Sch II of the Limitation Act is applicable KAMINI DEBI *v.* AGHORE NATH MUKHERJEE (1909) **14 C. W. N. 357**

2. ——— 'Revival' of decree, what is—*Civil Procedure Code (XIV of 1882), s. 248, notice under—No revival where notice not issued.* Where on an application for execution of a decree

more than one year old, order for execution was issued without the notice to the judgment-debtor required by s. 248 of the Civil Procedure Code of 1882, such order for execution does not 'revive' the judgment within the meaning of Art. 180 of Sch. II of the Limitation Act of 1877. It is only where such notice has been issued that the judgment or decree is 'revived.' DESSOO VENKATESA PERUMAL CHETTY *v.* SRINIVASA RANGA ROW (1909) . . **I. L. R. 33 Mad. 187**

LIMITATION ACT (IX OF 1908).

——— s. 7—*Limitation Act (XV of 1877), s. 8, Sch II, Art. 179, expl. 1—Minor decree-holders—Applications for execution by guardian—Attainment of majority by one decree-holder—Application by guardian takes effect in favour of all—Right of the major decree-holder to give discharge to the judgment-debtor in respect of the judgment-debt* Two minor sisters, who were born in the years 1881 and 1887, obtained a decree against the defendants in May 1900. The minor decree-holders were represented by a guardian appointed by the Court. The said decree was confirmed by the High Court in appeal in March 1901 Subsequently the guardian presented applications for the execution of the decree in 1904, 1905 and 1906, and while the last application was pending the guardian died. Thereupon the decree-holders presented an application for execution as majors in 1908. The defendants contended that as the elder decree-holder had attained majority, the application by the guardian was, as to her, unauthorized and the execution of the decree was barred as against her. It was further contended that as the elder decree-holder could from the time of her attaining majority make an application and give a good discharge to the judgment-debtor for the decretal-debt without the concurrence of the minor, time had, therefore, run against both under s 8 of the Limitation Act (XV of 1877) or s. 7 of the Limitation Act (IX of 1908) *Held*, that by reason of the first explanation of Art. 179 of the Limitation Act (XV of 1877) an application made by a representative of one of joint decree-holders takes effect in favour of all. Therefore, though the elder decree-holder had attained majority, the applications made by the guardian as the next friend of the minor decree-holder took effect in favour of both *Held*, further, that the contention under s. 8 of the Limitation Act of 1877 or s. 7 of the Limitation Act of 1908 was inconsistent with the decisions in *Govindram* v. *Tatia*, *I. L. R. 20 Bom. 383*, and *Zamn Hasan* v. *Sundar*, *I L R. 22 All. 199*, the applicability of which had not ceased owing to any change in the words of s. 7 of the Limitation Act of 1908. MANCHAND PANACHAND *v.* KESARI (1910) **I. L. R. 34 Bom. 672**

——— Sch. I. Art. 106—*Suit for partnership accounts—Limitation Act (IX of 1908), Art. 106—*

Specific assets realised within period of limitation. If a suit for general partnership accounts and a share in partnership profits is itself barred, the plaintiff in such a suit cannot be allowed to proceed speculatively against any and every partnership asset which may have been realised by the defendant after dissolution and within the period of limitation *Merwanji Hormusji* v. *Rustomji Burjorji*, *I. L. R. 6 Bom 628*, distinguished AHMED SULEMAN *v* BHAGWANDAS VISRAM AND CO (1909) . . . **I. L. R. 34 Bom. 515**

——— Sch. I, Arts. 166, 181—

See BENGAL TENANCY ACT, s. 65.
14 C. W. N. 1098

——— Sch. I, Art. 181—

See MORTGAGE . **I. L. R. 37 Calc. 796**

LIS PENDENS.

See SALE FOR ARREARS OF REVENUE.
14 C. W. N. 677

See TRANSFER OF PROPERTY ACT, s 52.
14 C. W. N. 322

LOCAL GOVERNMENT.

——— order of, authorising complaint—

See JURY, RIGHT OF TRIAL BY.
I. L. R. 37 Calc. 467

——— powers of—

See JURY, RIGHT OF TRIAL BY.
I. L. R. 37 Calc. 467

LOCAL INSPECTION.

——— *Power of Magistrate to make such inspection during a trial to understand the evidence and to determine the credibility of witnesses—Importing into judgment facts observed on such inspection—Disqualification of Magistrate—Illegality of conviction—Criminal Procedure Code (Act V of 1898), ss 148, 202, 293, 294, 556, Explanation.* A Magistrate may inspect the place of the occurrence of an offence in cases where he cannot follow or understand the evidence without seeing the features of the land, and he does not, merely by doing so, disqualify himself from trying the case. But every possible precaution should be taken that the inspection is only a view of the local features, and an immediate report of what he has seen should be placed on the record and laid open to the scrutiny of the parties The Magistrate can use the testimony of his own senses to test the veracity of the witnesses before him as regards the features of the locality, but he cannot import into the case other matters of facts which he has himself observed. Where the Magistrate did not merely view the place of occurrence for the purpose of following or understanding the evidence and testing it in respect of the features of the locality, but imported into

MAHOMEDAN LAW—DIVORCE.

——————— *Hanafi Law—Divorce—Talak need not be addressed directly to the wife to constitute a valid divorce.* According to the Hanafi Law, it is not necessary that the Talak or words of repudiation should be addressed directly to the wife to constitute a valid divorce. The expressions mentioned in the 'Hedaya' as constituting express divorce are not exhaustive, but merely illustrative of the different forms in which the Talak may be pronounced. The incidents of marriage and divorce under the Muhammadan Law fully discussed. *Furzund Hossein* v. *Janu Bibee, I. L. R. 4 Calc. 588,* doubted ASHA BIBI *v.* KADIR IBRAHIM ROWTHER (1909)

I. L. R. 33 Mad. 22

MAHOMEDAN LAW—DOWER.

See MAHOMEDAN LAW—WIDOW.

1. ——————— Dirham, value of—*Dower.* The money value of ten *dirhams* in India is something between three and four rupees *Sughra Bibi* v. *Musa Bibi, I. L. R. 2 All. 573,* referred to. ASMA BIBI *v.* ABDUL SAMAD KHAN (1909)

I. L. R. 32 All. 167

2. ——————— Jurisdiction—*Marriage—Dower—Act No. XVIII of 1876 (Oudh Laws Act). Held,* that the mere fact that a marriage was celebrated in Lucknow, the parties being afterwards domiciled in the province of Agra, was not sufficient to authorize a Court in the province of Agra to apply to a suit, brought by the wife against the heirs of her deceased husband for recovery of her dower, the provisions of the Oudh Laws Act, 1876 *Zakeri Begum* v. *Sakina Begum, I. L. R. 19 Calc 689,* followed. RUKIA BEGAM *v* MUHAMMAD KAZIM (1910) . . **I. L. R. 32 All. 477**

MAHOMEDAN LAW—ENDOWMENT.

1. ——————— Mortgage—*Wakf—Mortgage of wakf property by Mutwalli for necessity of urgent character, whether valid—Effect of obtaining permission of Cadi after the mortgage—Loan by a trustee at a high rate of interest.* Under the Mahomedan Law, mortgage of *wakf* property by the *mutwalli* in case where necessity is established is valid even if the permission of the Cadi is obtained subsequent to the mortgage. Where, therefore, a Court found that a mortgage by a *mutwalli of wakf* properties was for urgent necessity and that the mortgage was proper, the mortgage is valid in law, inasmuch as it might be taken to have been retrospectively approved by the Court. A loan by a trustee of endowed property at the rate of interest at 12 per cent. per annum with quarterly rests, could not be considered beneficial to the endowment, although the principal sum itself might have been urgently raised for the protection of the endowment; and in such a case the Court is justified in allowing interest at a reduced rate NIMAI CHAND ADDYA *v.* GOLAM HOSSEIN (1909)

I. L. R. 37 Calc. 179

MAHOMEDAN LAW—ENDOWMENT—*contd.*

2. ——————— Mutwalli, suit for office of—*Waqf—Direction of founder, Court's power to disregard—Surrender of the office of Mutwalli and appointment of a successor by a person who is not a general trustee, effect of—Limitation Act (XV of 1877), Sch. II, Art. 120.* In appointing a *mutwalli* a Court will not disregard the directions of the founder except for the manifest benefit of the endowment *In re Tempest, L. R 1 Ch. App. 485, 14 L. T. 685,* referred to. *A* created a *waqf* on the 22nd April 1864; by the *waqfnamah* he appointed himself the first *mutwalli,* and also gave directions as to the appointment of his successors. The deed further provided that after the death of the founder his widow would remain in possession of the endowed properties, and the *mutwalli* would act under her orders. During the lifetime of the founder, the person who was nominated as the successor in the office of *mutwalli* died; subsequently, on the founder's death in 1868, his widow obtained certificate and undertook the performance of the duties of *mutwalli,* and continued to do so till the 29th of January 1877, when she executed a *towliatnamah,* by virtue of which she surrendered the office of *mutwalli,* and appointed a third party as her successor in that office, who accordingly took possession of the endowed properties. Upon a suit by the plaintiff as one of the representatives of the founder for declaration of his right as *mutwalli* and for recovery of possession of the endowed properties: *Held,* that inasmuch as the widow of the founder was in no sense a general trustee, and that she had no authority, express or implied, to modify in any way the terms of the trust-deed, nor she had the authority to renounce the office and appoint a successor, her acts were illegal under the Mahomedan Law, and that Art. 120 of Sch. II of the Limitation Act applied to the case, and the plaintiff's suit was barred by limitation. KHAJEH SALIMULLAH *v.* ABUL KHAIR M. MUSTAFA (1909)

I. L. R. 37 Calc. 263

3. ——————— Declaration of wakf, suit for—*Right of Muhammadans entitled to use such property to sue for a declaration that property is waqf.* The plaintiffs, Mahomedans resident in the city of Kanauj, sued for a declaration that a certain *idgah* and the land adjoining it situated in a village in pargana Kanauj was waqf property. *Held,* that as Muhammadans who had a right to use the *idgah* they were entitled to sue and that no special permission was required to enable them to do so. *Zafrayab Ali* v. *Bakhtawar Singh, I. L. R. 5 All. 497,* and *Jawahra* v. *Akhar Husain, I. L. R. 7 All. 178* followed. *Wajid Ali Shah* v. *Deanutullah Beg, I. L. R. 8 All. 31,* distinguished. MUHAMMAD ALAM *v.* AKBAR HUSAIN (1910)

I. L. R. 32 All. 631

4. ——————— Subject of wakf—*Wakf—Right to recover money under a decree cannot be made the subject of Wakf.* Right to recover money under a decree cannot be made the subject of wakf in

MAHOMEDAN LAW—ENDOWMENT —*concld.*

the absence of a custom authorising such appropriation. *Kulsom Bibee* v. *Gulam Hossein Cassim Ariff, 10 C. W. N. 449, 494,* referred to and followed *Kileloola Sahib* v. *Nuseerudeen Sahib, I L R 18 Mad. 201, 209,* referred to. KADIR IBRAHIM ROWTHER *v.* MAHOMED RAHUMADULLA ROWTHER (1909) . . . **I. L. R. 33 Mad. 118**

5. ——— Sale of wakf property—*Sanction to sell—Jurisdiction—Practice—Trustees Act (XXVII of 1866), s 3—Trustees' and Mortgagees' Powers Act (XXVIII of 1866) s 45—"Cases to which English law is applicable"* .On an application made by the *mutwallis to a wakf,* for sanction to sell *wakf* property :—*Held,* that there being no statute authorising such an application, such sanction could only be obtained by means of a suit. *In the matter of Woozatunnessa Bibee, I L R. 36 Calc 21,* not followed Although a Judge of the High Court exercises the functions of a *kazi* when administering Mahomedan law, the procedure to be adopted is to be regulated by the Code of Civil Procedure, and the Rules and Orders of the High Court. *Shama Churn Roy* v. *Abdul Kabeer, 3 C W. N 158,* and *Nemai Chand Addya* v. *Golam Hossein, I L. R 37 Calc 179,* referred to Such an application does not come within the purview of Acts XXVII and XXVIII of 1866: these Acts govern only such trusts as are in the form of an English trust and are constituted by persons of purely English domicile, or persons governed by the Indian Succession Act *In re Kahandas Narrandas, I. L R 5 Bom 154,* and *In re Nilmoney Dey Sarkar, I. L. R. 32 Calc. 143,* not followed. *In re* HALIMA KHATUN (1910) **I. L. R. 37 Calc. 870**

MAHOMEDAN LAW—LEGITIMACY.

——— Acknowledgment of child as son —*Illegitimate son—Zina—Son by adulterous intercourse cannot be legitimised.* Under Mahomedan law, a person can acknowledge a child as a son, when there is no proof of the latter's legitimate or illegitimate birth and his paternity is unknown in the sense that no specific person is shown to have been his father. It is not permissible to acknowledge a child born of *zina* (*i e*, fornication, adultery or incest). *Muhammad Allahdad Khan* v. *Muhamad Ismail Khan, I. L. R 10 All. 289,* followed MARDANSAHEB *v.* RAJAKSAHEB (1909) **I. L. R. 34 Bom. 111**

MAHOMEDAN LAW—MARRIAGE.

1. ——— Dower—*Marriage—Act No XVIII of 1876 (Oudh Laws Act). Held,* that the mere fact that a marriage was celebrated in Lucknow, the parties being afterwards domiciled in the province of Agra, was not sufficient to authorize a court in the province of Agra to apply to a suit, brought by the wife against the heirs of her deceased husband for recovery of her dower, the provisions of the Oudh Laws Act, 1876. *Zakeri Begum* v. *Sakina Begum, I L. R. 19 Calc. 689,* followed. RUKIA BEGAM *v* MUHAMMAD KAZIM (1910) . . . **I. L. R. 32 All. 477**

MAHOMEDAN LAW—MARRIAGE— *contd.*

2. ——— Allowance to bride—*Agreement by father-in-law of bride to pay annuity to her in consideration of her marriage to his son—"Kharch-i-pandan"—"Pin-money"—Right to sue of persons not party to agreement—Agrecment on behalf of minors -Refusal to live with husband—Unconditional agreement to pay allowance.* In accordance with an arrangement made between the defendant and the father of the plaintiff (then a minor) on the occasion and in consideration of her marriage with the defendant's son (also a minor), the defendant executed a document whereby he agreed to "continue to pay the sum of R500 a month in perpetuity" to the plaintiff for her "pandan (betel nut) expenses," etc., "from the date of the marriage, *i e.*, from the date of her reception," and made the payment of the allowance a charge on certain immoveable property specified in the agreement. The plaintiff's reception into her husband's house took place in 1883. The husband and wife lived together till 1896 when owing to differences she left her husband's home and resided elsewhere, when the defendant stopped the payments In a suit to recover arrears of the allowance: *Held* (affirming the decision of the High Court), that the plaintiff, though not a party to the agreement, was entitled in equity to enforce her claim. *Tweddle* v. *Atkinson, 1 B & S. 393,* distinguished as being an action of assumpsit and decided on a rule of common law inapplicable to the circumstances of the present case, in which the agreement specifically charged immoveable property with the payment of the allowance and the plaintiff was the only person beneficially entitled under it. In India and amongst communities circumstanced as were Muhammadans among whom marriages were contracted for minors by parents and guardians, serious injustice might be occasioned if the common law doctrine were applied to agreements or arrangements entered into in connexion with such contracts. *Held,* also, that the allowance for "kharch-i-pandan," though having some analogy in its nature to the English "pin-money," stood on a different legal footing arising from difference in social institutions. It was a personal allowance to the wife, over the application of which the husband had little or no control, nor were there obligations attached to it as was the case with "pin-money" in England. On the terms of the agreement here the payment of the allowance was unconditional, and under the circumstances the fact that the plaintiff had left her husband's house and refused to live with him did not bar her from recovering it KHWAJA MUHAMMAD KHAN *v* HUSAINI BEGUM (1910) **I. L. R. 32 All. 410**

3. ——— Presumption of marriage— *Absence of direct evidence of marriage—Long cohabitation—Effect on such presumption of alleged wife having been a prostitute when brought to*

MAHOMEDAN LAW—MARRIAGE— *concld.*

alleged husband's house—Acknowledgment of woman as wife—Marriages of daughters to respectable men In this case the appellant's success depended on his proving his status as the legitimate son of his parents. *Held*, by the Judicial Committee (upholding the decision of the Judicial Commissioner's Court), that there was no evidence of marriage between them, and the presumption of marriage which might have arisen from their prolonged cohabitation did not apply because the mother before she was brought to the father's house was admittedly a prostitute. Instances of alleged acknowledgment by the father of the mother as his wife, and the fact that two of the appellant's sisters, who were in the same case as to their legitimacy as he was, were married to respectable men with due formalities, were held, under the circumstances, insufficient to affect the question favourably for the appellant. GHAZANFAR ALI KHAN *v* KANIZ FATIMA (1910) . . **I. L. R. 32 All. 345**

MAHOMEDAN LAW—SUCCESSION.

——— **Exclusion of female heirs**—*Custom excluding females from succession in Oudh—Limitation—Relinquishment—Estoppel M*, a Mahomedan of Oudh, died leaving two widows, *B* and *I*, and his mother. His estate passed first to his mother and on her death to his widows in equal shares. After *B's* death on 24th January 1888, *I* retained possession of the whole estate until her death in 1894. When mutation was effected in favour of the sons of the brothers of *B* and *I*, a sister of *B* instituted two suits for recovery of her share. In the first suit the Subordinate Judge held that the succession was governed by the Mahomedan Law and that the custom of excluding female heirs was not proved, and decreed the suit. The Judicial Commissioners affirmed these findings: *Held*, that the concurrent findings of fact were fatal to the appeal. The second suit was instituted on 11th February 1903. The dispute related to the estate left by the plaintiff's brother Mubarak who died on 7th February 1891, including in that estate the property he had inherited from *B* and his father: *Held*, that limitation began to run against the plaintiff, at soonest, from the death of *I*, and that therefore the suit was not barred. *Held*, further, that the plaintiff had not relinquished her claim nor was she estopped from pressing it MUHAMMAD KAMIL *v* MUSAMMAT IMTIAZ FATIMA (1909) . . . . . **14 C. W. N. 59**

MAHOMEDAN LAW—TRUST.

——— **Revocation of trust**—*Wakf—Gift—Essential elements for validity—Power of revocation—General principles—Vested remainders.* In 1902 a Shia Mahomedan by deed conveyed certain immoveable property to himself and other trustees for himself for life and after his death for the payment of annuities to his widow and daughter, and the balance to certain charities. Further clauses provided

MAHOMEDAN LAW—TRUST—*concld.*

that on the death of his widow her annuity was to go to certain other charities and that on the death of his daughter a lump sum was to be given to her son. A further proviso reserved power to the settlor at any time to revoke all or any of the above trusts. In 1908 he revoked the trust, and executed a mortgage of the property. In 1909 he died and receivers of his estate were appointed. His daughter then filed a suit for a declaration, *inter alia*, that the revocation and subsequent mortgage were invalid, and that the original trusts still subsisted. *Held*, that the conveyance in 1902 was invalid. Looked at from the standpoint of the Mahomedan law-giver, a private trust would be no more than a private gift *inter vivos* through the medium of the third party, and therefore subject to all the conditions of a valid gift, but, *quære*, whether private trusts were known to Mahomedan law *Banoo Begum* v. *Mir Abed Ali*, *I. L. R. 32 Bom. 172*, discussed and distinguished JAINABAI *v.* R D SETHNA (1910) . . **I. L. R. 34 Bom. 604**

MAHOMEDAN LAW—WAKF.

See MAHOMEDAN LAW—ENDOWMENT.

MAHOMEDAN LAW—WIDOW.

1. ——— **Claim to dower**—*Rights of widow in possession in lieu of dower—Proof of consent of husband or heirs not necessary.* A Mahomedan widow to whom dower is due who enter into possession of her husband's property on his death, is entitled to hold the estate against the other heirs until her claim to dower is satisfied, subject to her liability to account for the profits which she may receive while so in possession. It is not necessary for her to show that the deceased husband or his heirs consented to her getting into possession. *Amanat-un-nissa v. Bashir-un-nissa*, *I L. R. 17 All. 77*, dissented from. *Mussumat Bebee Bachun* v *Sheikh Hamid Hossein*, *14 Moo. I. A. 377*, *Ameer-oon-nissa* v. *Moorad-oon-nissa*, *6 Moo. I. A. 211*, and *Amani Begum* v. *Muhammad Karim-ullah*, *I. L. R. 16 All 225*, referred to. RAMZAN ALI KHAN *v.* ASGHARI BEGAM (1910) **I. L. R. 32 All. 563**

2. ——— *Dower—Right of widow to remain in possession of property of her husband—Such right heritable.* The right of a Muhammadan widow who has entered into possession of her husband's property peacefully and without fraud in lieu of her dower debt, is a heritable right and her heirs are entitled to remain in possession until the debt is satisfied. *Aziz-ul-lah Khan* v. *Ahmad Ali Khan*, *I. L. R. 7 All. 353*, followed. *Amanat-un-nissa* v. *Bashir-un-nissa*, *I. L. R. 17 All. 77*, doubted. *Mussumat Bebee Bachun* v. *Sheikh Hamid Hossein*, *14 Moo. I. A 377*, *Mahomed Ussud-ood-lah Khan* v. *Mussumat Ghasheea Beebee*, *1 Agra 150*. *Mussamut Kummur-ool-nissa Begum* v. *Mahomed Hussun*, *1 Agra 287*, *Mussamut Wahid-un-nissa* v. *Mussamut Shubrattun*, *6 B. L. R. 54*, *Ahmad Hossein* v. *Mussammut Khodeja*, *10 W. R. C. R.*

MAHOMEDAN LAW—WIDOW—*concld.*

369, Syud Bazayet Hossein v. *Dooli Chand, L R. 5 I. A. 211, Ali Muhammad Khan* v. *Aziz-ullah Khan, I L R 6 All. 50, Ayuba Begam* v *Nazir Ahmad, All. Weekly Notes (1890) 115, Hadi Ali* v. *Akbar Ali, I. L. R 20 All 262,* and *Muzaffar Ali Khan* v *Parbati, I L. R 29 All 640,* referred to. ALI BAKHSH *v* ALLAHDAD KHAN (1910) **I. L. R. 32 All. 551**

MAHOMEDAN LAW—WILL.

——— **Probate**—*Will, admissibility of, in evidence, without probate—Probate and Administration Act (V of 1881), s 4—Succession Act (X of 1865), s 187—Hindu Wills Act (XXI of 1870) s 2.* There is no provision of law rendering it obligatory, in the case of a Mahomedan will to take probate. After due proof, a Mahomedan will is admissible in evidence, notwithstanding that grant of probate has not been obtained. *Fatma* v. *Shaik Essa, I L R 7 Bom. 266,* not followed. *Shaik Moosa* v. *Shaik Essa, I. L R 8 Bom 241,* followed *Kherodemoney Dossee* v. *Durgamoney Dossee, I L. R 4 Calc 455, Administrator-General of Bengal* v. *Premlal Mullick, I L R. 22 Calc. 788, Sarat Chandra Banerjee* v *Bhupendra Nath Basu, I. L. R. 25 Calc. 103, Bhagvansang Bharan* v *Bechardas Harjivandas, I. L R 6 Bom. 73,* and *Surbomungola Dabee* v. *Mohendronath Nath, I L R 4 Calc 508,* referred to. SAKINA BIBEE *v* MAHOMED ISHAK (1910) . . **I. L. R. 37 Calc. 839**

MAINTENANCE

See TALUKDAR, RIGHTS OF.
I. L. R. 32 All. 9

——— **Hindu widow**—*Hindu Law—Maintenance allowed by will of husband to wife—Unchastity of wife after husband's death—Maintenance not affected—Unchastity—Starving maintenance.* A Hindu widow was entitled to maintenance at the rate of R24 a year under her husband's will. After the husband's death, the widow led for some time an unchaste life and gave birth to a child: but since then she remained chaste. She sued to recover maintenance allowed to her under her husband's will It was contended in reply that the plaintiff, on account of the unchaste life which she had led for some time after her husband's death, had forfeited her right even to bare or starving maintenance. *Held,* negativing the contentions, that though the annuity was granted by the will as "maintenance" that word could not be understood as imposing any condition or restriction so as to cut down or extinguish the right to R24 a year given by the will. The rule that the will of a Hindu must be construed with due regard to Hindu habits and notions applies only where there is ambiguity. Caution must be used in applying that rule and it must be adopted only where a suggested construction of doubtful language leads to manifest absurdity or hardship The general rule to be gathered from the texts is that a Hindu wife cannot be absolutely abandoned by her husband. If she is living an unchaste life, he is bound to keep her in the house under restraint and provide her with food and raiment just sufficient to support life, she is not entitled to any other right. If, however, she repents, returns to purity and performs expiatory rights, she becomes entitled to all conjugal and social rights, unless her adultery was with a man of a lower caste, in which case, after expiation, she can claim no more than bare maintenance and residence *Honamma v. Timannabhat, I L. R. 1 Bom 559, Valu* v *Ganga, I L R 7 Bom 84,* and *Vishnu Shambhog* v. *Manjamma, I. L R 9 Bom. 108,* discussed PARAMI *v* MAHADEVI (1909) **I. L. R. 34 Bom. 278**

MAINTENANCE—*concld.*

MAINTENANCE GRANT.

See GRANT . **I. L. R. 37 Calc. 674**

MALABAR COMPENSATION FOR TENANTS IMPROVEMENTS ACT (MAD. ACT I OF 1887).

——— **s. 7**—*Stipulation in lease to receive compensation at ordinary rate does not exclude operation of the Act—Rate of compensation claimable is that prevailing when compensation is paid* The terms of a lease executed before the passing of Madras Act I of 1887 provided that the tenant at the time of surrender should receive compensation for fruit trees at the customary rate Before the surrender, Madras Act I of 1887 was passed and provided a rate of compensation for fruit trees, In a suit by the tenant to recover compensation under the lease: *Held,* that the stipulation aforesaid did not exclude the operation of the Act, there being no such special contract as is contemplated by s. 7 of the Act and that compensation must be paid at the rate provided by the Act. KERALA VARMAH VALIA *v* ONDAN RAMUNNI (1892) **I. L. R. 33 Mad. 218**

MALABAR LAW.

——— *Acquisition by manager of branch tarwad who is only anandravan of the whole tarwad—Property acquired by anandravan to be deemed property of the tarwad, in the absence of evidence to show self-acquisition.* The rule of Hindu Law that if nothing appears in the case except that a member of a joint family is in possession of property, the burden of proving self-acquisition lies on such person, applies to property in the possession of an anandravan of a Malabar tarwad. Where such anandravan is also the manager of a branch tarwad and was in possession of funds belonging to such branch, the presumption will be that such property belongs to the branch. MARI VEETIL CHATHU NAIR *v.* MARI VEETIL MULAMPAROL SEKARA NAIR (1909) . **I. L. R. 33 Mad. 250**

MALICE.

See LIBEL . . **1. L. R. 37 Calc. 760**

MALICIOUS PROSECUTION.

See DAMAGES SUIT FOR **14 C. W. N. 86**

MINOR—*concld.*

of s. 456 of the Civil Procedure Code (Act XIV of 1882) at the time the application for the appointment of a guardian was made, was not sufficient to render the proceedings illegal and void as against the minors on the ground that they were not properly represented therein *Walian* v *Banke Behari Pershad Singh, I. L R 30 Calc. 1021; L. R. 30 I. A 182,* followed The order being on the record, the presumption was, in the absence of evidence to the contrary, that everything was regularly and properly done MANNU LAL *v.* GHULAM ABBAS (1910) . **I. L. R. 32 All. 287**

2. ——— Sale—*Sale in favour of minor void.* A sale in favour of a minor is void. *Mohori Bibee* v. *Dharmodas Ghose, I. L. R 30 Calc. 539,* followed. NAVAKOTTI NARAYANA CHETTI *v.* LOGALINGA CHETTI (1909) **I. L. R. 33 Mad. 312**

3. ——— Custody of—*Determination of custody of minor—Contract of apprenticeship by minor, how far enforceable—Injunction against minor for breach of such contract—When Court will take minors from custody of parents or persons selected by them* A minor may bind himself by a contract of apprenticeship if it be for his benefit; but such a contract cannot be specifically enforced against him either directly or by restraining him from taking service under others or by restraining others from employing him. *DeFrancesco* v *Barnum, 43 Ch. D. 165,* referred to. If the contract is for the benefit of the minor apprentice, an action will lie for enticing away such apprentice, and to recover his earnings. Parents and guardians cannot divest themselves of their right of guardianship by any contract A delegation of such right is revocable at any time and the parent or guardian is bound to revoke it if it is used to the detriment of the children, and it is open to the Court within whose jurisdiction the children are found to exercise the same power, if cause is shown for such interference The jurisdiction of the Courts to take away children from parents or from persons selected by them is a parental one and the Courts must do what a wise parent under the circumstances would or ought to do. *The Queen* v. *Gyngull, [1893] 2 Q B 232, 248,* referred to. The main consideration to be acted upon is the benefit or welfare of the child; the welfare of the child means not only its physical but also its moral and religious welfare. A male child above the age of 14 and a female child above the age of 16 years will not ordinarily be compelled to remain in custody to which he or she objects; and in the case of younger children who are still old enough to form an intelligent preference, their wishes will form one of the elements for consideration The Court will remove children from the custody of one from whom cruelty or corruption is apprehended. POLLARD *v.* ROUSE (1910)
I. L. R. 33 Mad. 288

MIRASI TENANT.

See SARANJAM . **I. L. R. 34 Bom. 329**

MISAPPROPRIATION.

——— *Penal Code, ss. 465, 471, 477A—Removal of evidence of misappropriation by shewing amount misappropriated in accounts, if offence under.* Where in order to remove evidence of misappropriation of a sum of Rs10 the amount was shown in the accounts as having been received on a date on which it could not have been received: *Held,* that the entry, though false, did not conceal liability but rather showed in regard to such liability the true position of affairs; and so "intent to defraud" in its true legal significance was not made out; and there could be no conviction under ss 465, 471 or 477A of the Penal Code. *Lalit Mohan Sarkar* v *The Queen-Empress, I. L. R. 22 Calc. 313,* and *The Deputy Legal Remembrancer* v. *Rash Behary Dass, 12 C. W. N. 581,* distinguished. JYOTISH CHANDRA MUKHERJEE *v* EMPEROR (1909)
14 C. W. N. 82
s. c. I. L. R. 36 Calc. 955

MISDIRECTION.

See EVIDENCE ACT, s. 167.
14 C. W. N. 493

MISJOINDER.

See JURY, RIGHT OF TRIAL BY.
I. L. R. 37 Calc. 467

MISJOINDER OF CAUSES OF ACTION.

See PRE-EMPTION . **I. L. R. 32 All. 14**

MISJOINDER OF PARTIES.

See PRE-EMPTION . **I. L. R. 32 All. 14**

MISTAKE.

See REGISTRATION ACT, ss. 17, 49.
I. L. R. 34 Bom. 202

——— **amendment of**—

See POWER-OF-ATTORNEY.
I. L. R. 37 Calc. 399

MISTAKE OF FACT.

See LEASE . **I. L. R. 3 Calc. 293**

MITAKSHARA.

See HINDU LAW . **I. L. R. 37 Calc. 214**

See HINDU LAW—GIFT.
I. L. R. 37 Calc. 1

See HINDU LAW—INHERITANCE.
I. L. R. 34 Bom. 321, 510

See HINDU LAW—JOINT FAMILY.
I. L. R. 32 All. 183

MODEL RULES UNDER s. 351A OF THE BENGAL MUNICIPAL ACT.

See BENGAL MUNICIPAL ACT.
I. L. R. 37 Calc. 44

MOHUNT.

See HINDU LAW—SUCCESSION.
14 C. W. N. 191

MOKARARI.

See BENGAL TENANCY ACT, s. 85.
14 C. W. N. 141

MOKARARIDARS.

See PARTITION . **I. L. R. 37 Calc. 918**

MOKARARI POTTAH.

See LANDLORD AND TENANT.
14 C. W. N. 268

MORTGAGE.

See AGRA TENANCY ACT (II OF 1901), SS. 19 AND 20 . **I. L. R. 32 All. 383**

See AGRA TENANCY ACT (II OF 1901), S 20. **I. L. R. 32 All. 628**

See CIVIL PROCEDURE CODE, 1882, S. 13. **I. L. R. 32 All. 215**

See CIVIL PROCEDURE CODE, 1882, SS. 13, 43 . . **I. L. R. 32 All. 119**

See CIVIL PROCEDURE CODE, 1908, O. XXXIV, R. 14 . **I. L. R. 32 All. 377**

See CONTRACT ACT (IX OF 1872), S 74. **I. L. R. 32 All. 448**

See DEKKHAN AGRICULTURISTS' RELIEF ACT, 1879, S. 2 **I. L. R. 34 Bom. 161**

See EVIDENCE ACT, 1872, S. 92. **I. L. R. 34 Bom. 59**

See HINDU LAW—JOINT FAMILY. **14 C. W. N. 552**

See LIMITATION ACT (XV OF 1877), SCH. II, ARTS. 134, 148 **I. L. R. 32 All. 160**

See MAHOMEDAN LAW—ENDOWMENT. **I. L. R. 37 Calc. 179**

See OCCUPANCY HOLDING. **14 C. W. N. 71**

See PRE-EMPTION . **I. L. R. 32 All. 45**

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 72 . **I. L. R. 32 All. 612**

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 74 . **I. L. R. 32 All. 138**

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 83 . **I. L. R. 32 All. 142**

MORTGAGE—*contd.*

See TRANSFER OF PROPERTY ACT, (IV of 1882). S 85 . . **I. L. R 34 Bom. 354**

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 101 . **I. L. R. 32 All.**

See VATAN . **I. L. R. 34 Bom. 175**

See WILL . **I. L. R. 34 Bom. 209**

1. ATTESTATION.

——— **Attesting witness**—*Mortgage—Transfer of Property Act (IV of 1882), s. 58—Co-executant if may attest execution by others—Evidence Act (I of 1872), ss. 68, 69, 70.* A mortgage bond executed by several persons was sought to be proved by the evidence of one of the executants who was also the scribe of the document: *Held*, that a party executing a document, required by law to be attested, cannot be an attesting witness thereof, and his evidence even if he was present at, and witnessed, the executions of it by others, cannot be accepted as that of an attesting witness in regard to such executions *Jogendra Nath* v. *Nitai Churn, 7 C. W. N. 385*, distinguished. *Bryan* v. *White, 2 Robertson 315, 317; Sharpe* v. *Birch, L. R. 8 Q. B. D. 111; Wright* v. *Tatham, 1 Ad. & Ell. 3, 23; Freshfield* v. *Reed, 9 M. & W. 404;* and *Seal* v *Claridge, L. R. 7 Q. B D. 516*, relied on. *Quære:* Whether admission of execution by a party is not receivable in proof of execution of such document by himself. PEARY MOHAN MAITI *v.* SREENATH CHANDRA MAITI (1908) **14 C. W. N. 1046**

2. CONSTRUCTION.

——— **Decree, mortgage of**—*Mortgagee has a charge on amount realised in execution of decree mortgaged—Civil Procedure Code, Act XIV of 1882, s 276—Attachment and mortgage of decree on same day—Mortgage valid unless attaching creditor shows it to have been effected during the pendency of attachment.* Where a decree is mortgaged and the amount due under the decree is subsequently realised in execution, the mortgagee has a charge on the amount so realised The mortgagee is entitled to a charge on property which through no fault of his has taken the place of the mortgaged property. *Singaravelu Udayan* v. *Rama Iyer, 13 Mad. L. J. 306*, dissented from. The receipt by one Court of a notice of attachment by another Court is not a judicial act to which the principle that judicial acts must be presumed to have been done at the earliest point of time of the date thereof, would apply. Where therefore a decree is mortgaged on a certain date, and notice of attachment of such decree is received by the Court on the same day, it lies on the attaching creditor seeking to set aside such mortgage as made during the pendency of attachment under s 276 of the Civil Procedure Code to show that the receipt of such notice was prior to the execution of the mortgage When a decree is attached and the attachment is

MORTGAGE—*contd.*

2. CONSTRUCTION—*concld.*

subsequently withdrawn by agreement, the attachment does not continue against the money realised in execution of such decree in the absence of anything to that effect in the agreement VENKATRAMA IYER *v.* ESUMSA ROWTHEN (1909)
I. L. R. 33 Mad. 429

See RADHIKA MOHAN GHOSE *v.* BROJENDRA KUMAR SAHA.
14 C. W. N. 125

3 FORECLOSURE.

——— Order absolute, application for— *Mortgage—Foreclosure—Limitation—Execution of decree, application for—Revival of pending execution—Limitation Act (IX of 1908), Sch II, Art 181.* Previous to the passing of the Limitation Act (IX of 1908) and the Civil Procedure Code (V of 1908), there was no rule of limitation applicable to an application for order absolute of a decree *nisi* made under s 86 of the Transfer of Property Act (IV of 1882). *Tiluck Singh* v. *Parsotein Proshad, I. L. R 22 Calc. 924, Rahmat Karim* v. *Abdul Karim, I. L. R. 34 Calc. 672,* referred to An application for execution of a decree may be treated as one in continuation or revival of a previous application, similar in scope and character, the consideration of which has been interrupted by the intervention of objections and claims subsequently proved to be groundless, or has been suspended by reason of an injunction or like obstruction *Qamaruddin Ahmad* v. *Jowahir Lal, I. L R. 27 All 334 : L. R. 32 I. A. 102, Rudra Narain Guria* v *Pachu Maity, I. L R 23 Calc. 437 ; Narayan Govind Manik* v *Sono Sadashiv, I. L. R 24 Bom 345 ; Rahim Ali Khan* v *Phul Chand, I. L. R. 18 All 482 ; Mir Ajmuddin* v *Mathura Das, 11 Bom. H. C 206 ; Suppa Reddiar* v. *Avudai Ammal, I L R. 28 Mad. 50 ; Paras Ram* v. *Gardner, I. L. R. 1 All 355,* referred to. The limitation Act (IX of 1908) does not profess to provide for all kinds of applications whatsoever. *Govind Chunder Goswami* v. *Rungunmoney, I L. R 6 Calc 60, Sital Prosad* v. *Abdul Rashit, 11 Oudh Cases 208,* referred to Nor does it apply to an application to a Court to do what the Court has no discretion to refuse. *Kylasa Goundan* v *Ramasami Ayyan, I L R 4 Mad 172, Balaji* v *Kushaba, I L R. 30 Bom. 415,* referred to. Nor is it applicable to an application to the Court to terminate a pending proceeding, the final order in which has been postponed for the benefit of the defendant or for the convenience of the Court. *Puran Chand* v. *Roy Radha Kishen, I. L R. 19 Calc 132,* referred to. Art. 181, Sch II of the Limitation Act (IX of 1908) does not govern an application for order absolute under order 34, rule 3 of the Civil Procedure Code (V of 1908) MADHABMANI DASI *v.* LAMBERT (1910) . **I. L. R. 37 Calc. 796**

4. PRIORITY.

1. ——— Prior mortgagee, right of, to deposit in Court decretal amount in payment of puisne mortgage-debt—*Sale of mortgaged property.* A second mortgagee brought a suit on his mortgage making the transferees of the prior mortgagee parties to the suit, and obtained a decree ; and in execution thereof the transferees applied to be allowed to deposit in Court the full amount of the second mortgage-debt in order to save the property from sale. The Court of first instance allowed the application ; but, on appeal, the District Judge set aside the order of the first Court :—*Held,* that the transferees of the prior mortgagee were entitled to pay off the mortgage-debt due on the subsequent mortgage to save the mortgaged property from sale BHAJAHARI MAITI *v.* GAJENDRA NARAIN MAITI (1909)
I. L. R. 37 Calc. 282

2. ——— Prior mortgagee, right of— *Civil Procedure Code, 1882, s 244.* A prior mortgagee in an application under s. 244 of the Code of Civil Procedure in execution is entitled to have his rights settled without being put to the extra expense and unnecessary trouble of bringing a fresh suit. GOVIND PROSAD MISSER *v* LACHMI CHARAN MARWARI (1909) . **14 C. W. N. 675 note**

3. ——— *Limitation Act (XV of 1877), Sch II, Arts. 132, 134, 148—Suit by prior mortgagee without making puisne mortgagee party—Sale and purchase by himself—Subsequent suit by second mortgagee and purchase by himself —Interest acquired by latter—Suit by him to redeem prior mortgagee-purchaser—Limitation.* Where a prior mortgagee sues on his mortgage without making the second mortgagee a party and in execution of the decree obtained by him purchases the property himself, and subsequently the second mortgagee also sues on his mortgagee without making the prior mortgagee a party, and purchases the property in execution of his decree, he acquires by his purchase only the interest he previously possessed as mortgagee. He can seek to enforce his rights as such by suit as against the prior mortgagee purchaser only within the period of 12 years from the due date of his own mortgagee as provided in Art 132 of Sch. II of the Limitation Act (XV of 1877), and he cannot claim the benefit of a fresh period of limitation running in his favour from the date of his purchase. A suit brought by him to redeem the prior mortgagee purchaser more than 12 years after the due date of his mortgage would be barred by Art. 132 of Sch. II of the Limitation Act (XV of 1877). NIDHIRAM BANDOPADHYA *v* SARBESSUR BISWAS (1909)
14 C. W. N. 439

5. REDEMPTION.

1. ——— Clog on the equity of redemption—*Two mortgages—Covenant to discharge the second mortgage before the first—Consolidation.* Under a covenant contained in a mortgage of the year 1867 the mortgagees took possession of

MORTGAGE—*contd.*

5. REDEMPTION—*contd.*

the mortgaged property. Subsequently the mortgagor took a further advance from the mortgagees and gave them a second mortgage on the same property in which they covenanted that they would pay off the amount due on the second mortgage before redeeming the first. *Held*, on suit by the mortgagors to redeem the mortgage of 1867, that this was an admissible covenant and not a clog on the equity of redemption *Bhartu* v *Dalip, All Weekly N. (1906) 278*, distinguished *Muhammad Abdul Hamid* v *Jairaj Mal, All Weekly Notes (1906) 267*, referred to In second appeal the plaintiffs mortgagors were allowed to amend their plaint so as to include a payer for redemption of both the mortgages. BRIJ LAL SINGH *v.* BHAWANI SINGH (1910) **I. L. R. 32 All. 651**

2. ——— Redemption, suit for— *Mortgage, deposit of money in Court if terminates—Mortgagor's claim for mesne profits after such deposit and before getting possession—Provincial Small Cause Courts Act (IX of 1887), Sch. II, Art. 32.* The relation of mortgagor and mortgagee ceases as soon as the mortgagor deposits the money in Court in pursuance of the Court's order in a redemption suit, and the possession of the mortgagee thereafter becomes wrongful possession. *Bibiyan Bibi* v. *Sachi Bewah, I. L. R 31 Calc. 863, s.c. 8 C W. N. 684*, referred to. Where under orders of the Court in a suit for redemption a mortgagor deposited the amount due on the mortgage in Court but the mortgagee did not deliver possession of the mortgaged property till some time later: *Held*, that a suit by the mortgagor for mesne profits up to the date when possession was delivered, was maintainable. The test to be applied is whether the sum claimed in the suit could have been recovered in the previous suit for redemption *Vinayak* v *Duttatraya, I. L. R. 26 Bom. 661*, referred to. *Rukhminibai* v. *Venkatesh, I L. R 31 Bom. 527 ; Satyabadi* v. *Harabati, I. L R. 34 Calc. 223 · s.c 5 C. L. J. 192 ;* and *Ram Din* v. *Bhup Singh, I. L. R 30 All. 225*, distinguished. A suit by a mortgagor against the mortgagee for mesne profits for the period during which he held wrongful possession of the property is maintainable in a Small Cause Court. Art. 31 of Sch. II of the Provincial Small Cause Courts Act is no bar to such suit being instituted in a Small Cause Court. SAHARI DUTT *v.* SHEIKH AINUDDY (1910) . . **14 C. W. N. 1001**

3. ——— Purchase, by mortgagee, of equity of redemption—*Transfer of Property Act (IV of 1882), s. 99—Sale voidable, not void—Mortgagor, if may redeem without setting aside sale—Mortgagee, trustee for mortgagor—Indemnity, right of mortgagee to, and to credit for amount paid for purchase.* It is a well established principle that a purchase by the mortgagee of the equity of redemption constitutes him a trustee for the mortgagor and that he does not (unless there has been a release of the equity of redemption or other circumstance which in law would bar his right to redeem) acquire an irredeemable title *Khiarajmal* v. *Diam, I. L. R. 32 Calc. 296, 312 s c 9 C. W. N. 201*, referred to The right to redeem which, according to this principle, would still subsist in the mortgagor, has not been affected by the decision of the Full Bench in *Ashutosh Sikdar* v *Behari Lal, I. L R. 35 Calc 61 · s c. 11 C. W. N 1011*, where it was held that a sale in contravention of the terms of s. 90 of the Transfer of Property Act is not a nullity, but an irregular sale liable to be avoided merely on proof that the terms of the section have been contravened. The mortgagor is under no necessity to have the sale set aside first in order to be entitled to redeem the property. He may sue for redemption within the period of limitation allowed by law, but in such a case the mortgagor would have to pay the mortgagee the amount given credit for by the latter in respect of the sale [*Mayan Pathuti* v. *Pakuran, I. L. R. 22 Mad. 347*], and the mortgagee would further be entitled to be reimbursed and to add to the mortgage-debt the amount which he has expended for the protection and preservation of the property. PANCHAM LAL CHOWDHURY *v.* KISHUN PERSHAD MISSER (1910) . . **14 C. W. N. 579**

6 REGISTRATION.

1. ——— Endorsements on mortgage bond—*Registration—Registration Act (III of 1877), s. 17, cl (n)—Endorsement on a mortgage-bond of payment made in satisfaction of a previous mortgage-debt—Civil Procedure Code (Act XIV of 1882), s. 43—Payment by a subsequent mortgagee under s 74 of the Transfer of Property Act (IV of 1882), effect of* The endorsements on a mortgage-bond of payments made in satisfaction of a mortgage, which payments did not purport to extinguish the mortgage, are covered by cl. (*n*) of s. 17 of the Registration Act, and as such do not require registration. *Jiwan Ali Beg* v *Basa Mal, I L R. 9 All 108*, and *Uppalakandi Kunhi Kutti Ali Haji* v. *Kunnam Mithal Kottaprath Abdul Rahiman, I. L. R. 19 Mad. 288*, followed. A subsequent mortgagee who makes a payment of a prior mortgage-debt under the provisions of s 74 of the Transfer of Property Act, in a suit to enforce his original mortgage against the security which, by his payment of the former mortgage, he has protected and made more valuable for the realisation of his debt, is bound, under s. 43 of the Code of Civil Procedure, to join in that suit any further claim which he has against that property by reason of such payment made by him. *Sundar Singh* v. *Bholu, I. L. R. 20 All. 322*, distinguished HARI NARAIN BANERJEE *v* KUSUM KUMARI DASI (1910) . **I. L. R. 37 Calc. 589**

2. ——— *Endorsement releasing mortgaged property for consideration in cash—Registration.* An endorsement made by

MORTGAGE—*contd.*

6 REGISTRATION—*concld.*

a mortgagee (on the back of the mortgage-deed) releasing the mortgaged property in consideration of a cash payment of Rs300 is a document which requires registration, and not being registered was not admissible in evidence either of the redemption of the property or of the real nature of the original transaction between the parties. PARASHARAMPANT *v* RAMA (1909)
I. L. R. 34 Bom. 202

7. SALE OF MORTGAGED PROPERTY.

1. ——— **Practice**—*First mortgagee's suit for sale—Surplus of sale proceeds—Second mortgagee's claim for sale in first mortgagee's suit of other property on which he has a mortgage—Civil Procedure Code (Act V of 1908), o. XXXIV—Costs* B mortgaged property in Calcutta to *A* and afterwards mortgaged the same property and a further property in the mofussil to *C*. *A* brought an ordinary mortgage suit against *B* for sale, making *C* a party-defendant. *A* obtained a decree; *C* thereupon claimed to be entitled to a decree for sale of the property mortgaged to *A* including the mofussil property not included in *A's* mortgage:—*Held*, that in *A's* suit *C* could only obtain the surplus of the sale-proceeds of the property in that suit and could not get any relief against the other property in the mofussil. *Kissory Mohan Roy* v *Kally Charan Ghose, I L. R. 22 Calc. 100, Kissory Mohan Roy* v. *Kally Churn Ghose, I L R. 24 Calc 190, In re Kissory Mohan Roy* v. *Kali Charan Ghose, 1 C. W. N. 106*, and *Platt* v. *Mendel, 27 Ch D. 246*, distinguished. *Mackintosh* v. *Watkins, 1 C. L. J. 31*, followed. The effect of the incorporation of the sections in the Transfer of Property Act into order XXXIV of the new Code of Civil Procedure is to put an end to any independent practice on the Original Side of the High Court based on the old procedure, and the Original Side should now follow the provisions of order XXXIV of the Code Costs will be on Scale No. 2, not Scale No 1, against the mortgagor who does not appear. SARAT CHANDRA ROY CHOWDHRY *v.* NAHAPIET (1910) . **I. L. R. 37 Calc. 907**

2. ——— **Execution of mortgage-decree**—*Stay of sale in execution of mortgage-decree—Jurisdiction of Court to stay sale—Waiver on behalf of minor of fresh-sale proclamation—Guardian ad litem, right of—Benefit to minors—Minors if entitle to impugn sale afterwards for want of fresh proclamation—Transfer of Property Act (IV of 1882), s 89—Civil Procedure Code (Act XIV of 1882), s. 291* The Court has jurisdiction to order stay of a sale in execution of a mortgage-decree under s 291 of the Civil Procedure Code, 1882. *Shyamkishen* v. *Sundar Koer, I. L. R. 31 Calc. 373*, explained *Bibyan Bibi* v. *Sachi Bewah, I. L. R. 31 Calc. 863*, referred to. There is no conflict between s 89 of the Transfer of Property Act and s 291 of the Code of Civil Procedure, 1882.

MORTGAGE—*contd.*

7. SALE OF MORTGAGED PROPERTY—*concld.*

The former section is concerned with the Court's order-absolute for sale, the latter with the adjournment of the sale The two sections relate to different matters Even if an order of the Court is erroneous, it is *ordinarily* not open to a party, who has obtained and enjoyed the benefit of an erroneous order, to turn round afterwards and ask that the order should be treated as a nullity and disregarded. The guardian *ad litem* appointed by the Court and acting in good faith is entitled to make applications, on behalf of the minors, and has the power to waive the right of the minors to a fresh sale-proclamation after postponement of the sale, if the postponement enured to the benefit of the minors The minors are not entitled in such a case to impugn the sale on the ground that a fresh sale-proclamation was not made. BIPIN BEHARI MITRA *v.* JATINDRA NATH GHOSE (1910) . **I. L. R. 37 Calc. 897**

3. ——— *Mortgage decree—Sale for arrears of revenue pending suit—Attachment of sale-proceeds of satisfaction* Where the surplus sale-proceeds in the hands of the Collector of a mortgaged property sold for arrears of revenue after the preliminary decree passed in the mortgage suit, was attached in execution of that decree and subsequently the decree was made absolute: *Held*, that so soon as the decree was made absolute the sum attached became available to the decree-holder and to that extent the decree was satisfied at that date. *Magraj Marwari* v. *Narsing Mohun Thakur, I L. R. 33 Calc 846, Debendra Nath* v. *Abdul Samed, 10 C L J. 150*, distinguished. GOPI KRISHNA MANDOL *v.* RAM LAL MANDOL (1910)
14 C. W. N. 484

8. SUBROGATION.

1. ——— **Presumption of subrogation**—*Presumption of intention—Interest—Costs, if part of decree.* Where the kobala by which mortgaged properties were sold recited certain mortgages which were paid off out of the purchase money and the mortgage bonds were preserved by the purchaser: *Held*, that there was a presumption of subrogation of the purchaser to the rights of the mortgagees *Held*, further, that in order to establish right by subrogation it was not necessary for the purchaser to prove any intention or agreement to subrogate and the presumption from the circumstances would be in his favour. Where the contract rate of interest is not proved to be a penalty or unconscionable, the court should not disturb it. Costs form a part of the entire decree and carry Court rate of interest. PRAYAG NARAIN KAFRI *v.* CHEDI RAI (1910) . **14 C. W. N. 1093 note**

2. ——— *Subrogation—Presumption of intention—Legal and equitable claim if both may be urged together.* The principle of subrogation is one based on a presumption of intention which may be supported by circumstances

MORTGAGE—*contd.*

2. SUBROGATION—*contd.*

or evidence of assignment or agreement or both. Where a debt on a mortgage decree obtained by *N* was paid off by money paid by plaintiff for which the defendant executed a fresh mortgage-bond at an increased rate of interest, which recited the necessity for paying off the decretal debt and which actually mentioning one of the three mesne mortgages falsely stated that the property was otherwise free from encumbrance: *Held*, that the plaintiff stepped into the shoes of *N* on the principle of subrogation and had priority over the mesne mortgagees. Subrogation by intention confers an equitable right and subrogation by agreement a legal claim. It is therefore open to a party to base his claim on both intention and agreement. *Gurdeo Sing* v. *Chandrikah Sing*, *5 C. L J. 611*, distinguished. *Bisseswar Prosad* v. *Lala Sarnam Sing*, *6 C. L. J. 134*, referred to. TARA SUNDARI DEBI *v.* KHEDAN LAL SAHU (1910) . **14 C. W. N. 1089**

3. ——— *Transfer of Property Act (IV of 1882), s. 95—Co-mortgagor paying off mortgage—Charge—Subrogation, limits of—Interest, Court's discretion as to—Tender of insufficient amount when valid pro tanto—Decree, vague and incapable of execution—Execution, amendment of decree in, when permissible* Where a decree of the High Court which was sought to be executed did not specify the period during which interest on the principal money due was to be allowed, the decree as regards the interest was indefinite and was not capable of execution. But the High Court did not give effect to this plea where it was conceded that an application for a review of the decree, if made, would be heard by the Bench hearing the present appeal which arose in execution proceeding, and proceeded to ascertain the rights of the parties as upon such application. If one of several joint mortgagors, in order to protect his interest, pays the joint debt, he is placed in the position of the mortgagee in relation to this co-mortgagors, to the extent of their shares of the debt. But the substitution of the new creditor in place of the original one, does not place the former precisely in the position of the latter for all purposes. The extent to which subrogation would be carried in any particular case must be governed by equitable considerations. In so far as any question of priority is concerned, he no doubt enjoys the same advantages as the original mortgagee and is entitled to priority over subsequent mortgagees from his co-mortgagors. In so far, however, as the amount of money which he is entitled to recover from his co-mortgagors is concerned, he can claim contribution only with reference to the amount actually and properly paid to effect redemption, to which sum he can and his legitimate expenses. In so far as interest on these sums is concerned, he cannot claim it for any period antecedent to the redemption. In regard to these matters the Court has a discretion which it will

MORTGAGE—*contd.*

8. SUBROGATION—*concld.*

exercise with a view to secure substantial justice regardless of form. *In re Hewitt*, *125 N. J. Eq. 210*; *Surjyram* v. *Barhamdeo*, *2 C. L. J. 288*; *Gurdeo* v. *Chandrikah*, *I. L. R. 36 Calc 193*; *s.c. 5 C. L. J. 611*, referred to. The doctrine that a mortgagee is not bound to accept any sum in part satisfaction of his decree and is entitled to an order absolute unless the entire amount is brought into Court for payment to him, is applicable only where there is no dispute as to what amount is due. An unconditional tender of a sum which turns out in the end to be less than what is really due may be valid *pro tanto* if there is a dispute as to the amount due though a tender to a part of what was admittedly due is of no avail. *Ganga Das* v. *Jogendra Nath*, *11 C W N 403*; *s.c. 5 C. L. J. 315*; *Ram Kamaleswari* v. *Sukhun Singh*, *7 C. W. N. 172*; *Dixon* v *Clark 5 C. B. 365*; *75 R. R. 747*, referred to Though a tender of a smaller amount than that of which an indivisible and entire claim consists may be invalid as a tender, there is nothing to prevent the creditor from accepting the amount tendered in part-payment and his doing so will not preclude him from afterwards claiming the residue of his account, always provided that the debtor did not make it a condition of his tender that it be accepted in discharge of the whole. *Bowen* v *Owen*, *11 Q B 130*, *75 R. R 306*, relied on. DIGAMBAR DAS *v.* HARENDRA NARAYAN PANDEY (1910) . . . . **14 C. W. N. 617**

9. USUFRUCTUARY MORTGAGE.

——— *Bombay Regulation V of 1827, s. XV, cl. 3—Usufructuary mortgage of 1869—Agreement to pay the debt after fixed period—Suit by mortgagee after the expiration of the period for the recovery of the debt by sale of mortgaged property* A usufructuary mortgage executed in the year 1869 contained the following agreement:—"The amount of Rl,750 is borrowed on the said premises. We three of us shall, after paying off the said amount of debt after fifteen years from this day, redeem our premises. Perhaps any one of us three might within the period pay off at one time the amount of rupees according to his share, you should allow redemption of the premises proportionately after receiving the amount and you should pass a receipt for the moneys received." In the year 1905 the mortgagee having brought a suit for the recovery of the mortgage debt by sale of mortgaged property, the first Court allowed the claim, but the Appellate Court reversed the decree and dismissed the suit on the ground that where in the case of a usufructuary mortgage the mortgagor agrees to redeem by payment of the principal after a stated period, the mortgagee has no higher or better right than he has under a simple usufructuary mortgage. *Held*, on second appeal by the plaintiffs, that the mortgage in suit was governed by cl. (3), s. XV of Regulation V of 1827, and there being nothing in the terms of the agreement

MORTGAGE—*concld.*

9. USUFRUCTUARY MORTGAGE—*concld.*

between the parties which either expressly or by implication indicated that the property should not by means of a suit be applied in liquidation of the debt, the suit would lie The decree of the Appellate Court reversed and that of the first Court restored *Mahadaji* v. *Joti, I. L R 17 Bom 425* and *Ramchandra* v *Tripurabai, (1898) P. J 43,* followed *Shaik Idrus* v *Abdul Rahiman, I L R 16 Bom 303, Sadashiv* v *Vyankatrao, I L. R. 20 Bom. 296,* and *Krishna* v. *Hari, 10 Bom L R 615,* explained PARASHARAM *v* PUTLAJIRAO (1909)
I. L. R. 34 Bom. 128

10. MISCELLANEOUS.

1. ——— *Mortgages, successive, in favour of same mortgagee—Suit to enforce earlier mortgages without joining the claim under the latest mortgage—Maintainability.* There is nothing in law to prevent a person who has several mortgages over the same property from bringing a suit on the earlier mortgages without joining in that suit his claim under the latest, if he does not in such a suit pray for the sale of the property subject to the latest mortgage. *Keshavram Dulavram* v. *Ranchhod Fakira, I. L R 30 Bom. 156, Dorasami* v *Venkata Seshagyar, 4 C W. N 814, Bhagwan Das* v. *Bhawani, I L R 26 All 14, Nattu Krishnama Chariar* v. *Annangara Chariar, I L R. 30 Mad. 353,* referred to. GOBINDA PROSAD *v.* LALA HARIHAR CHARAN (1910)
14 C. W. N. 1053

2. ——— *Two mortgagees advancing money in equal shares—Discharge of debtor by one not binding on the other mortgagee.* One of two mortgagees who have advanced the mortgage money equally cannot give a good discharge for the entire mortgage debt without the consent of or reference to his co-mortgagee. *Manzur Ali* v. *Mahmud-un nissa, I. L R 25 All. 155,* followed. *Bhup Singh* v *Zain-ul-Abdin, I L R. 9 All 205,* and *Barber Maran* v *Ramana Goundan, I. L R. 20 Mad. 461,* distinguished. RAM CHANDRA *v.* GOSWAMI RAJJAN LAL (1909)
I. L. R. 32 All 164

MORTGAGE-DEBT.

See TRANSFER OF PROPERTY ACT (IV OF 1882), S 90 . **I. L. R. 34 Bom. 540**

MORTGAGE SALE.

See CONTRIBUTION **14 C. W. N. 361**

MORTGAGEE.

See DECREE . **I. L. R. 34 Bom. 260**

See TRANSFER OF PPOPERTY ACT, S 73
14 C. W. N. 186

——— **right of, to an order for sale.**

See TRANSFER OF PROPERTY ACT, S. 67.
I. L. R. 34 Bom. 462

MORTGAGOR AND MORTGAGEE.

See TITLE **I. L. R. 37 Calc. 239**

MUKHTEAR.

See LEGAL PRACTITIONERS' ACT, 1879, SS. 12, 14 **14 C. W. N. 1073**

MULTIFARIOUS DOCUMENT.

See STAMP DUTY **I. L. R. 37 Calc. 629**

MUNICIPAL BOARD.

See LIMITATION ACT (XV OF 1877), SCH. II, ARTS 2, 61, 62 AND 120.
I. L. R. 32 All. 491

See UNITED PROVINCES MUNICIPALITIES ACT (I OF 1900), S. 147
I. L. R. 32 All. 620

MUNICIPAL COMMISSIONER.

See BOMBAY MUNICIPAL ACT (BOM. III OF 1888), S 305 . **I. L. R. 34 Bom. 593**

See BOMBAY MUNICIPAL ACT, S. 377.
I. L. R. 34 Bom. 346

See BOMBAY MUNICIPAL ACT, S. 390.
I. L. R. 34 Bom. 344

MUNICIPAL COUNCILLORS.

——— **election of—**

See CITY OF BOMBAY MUNICIPAL ACT (III OF 1888 AS AMENDED BY BOM. ACT V OF 1905), SS 33 AND 34.
I. L. R. 34 Bom. 659

MUNICIPAL ELECTION.

See BOM MUN. ACT, 1888, SS 33, 34.
I. L. R. 34 Bom.659.

MUNSIF, JURISDICTION OF.

See ADOPTION . **I. L. R. 37 Calc. 860**

MURDER.

——— *Violent and determined attack by a number of persons, regardless of the consequences, on another, causing other injuries and severe ruptures of a healthy spleen—Intent to cause death or such bodily injury as the offender knows to be likely to cause death—Penal Code (Act XLV of 1860), ss 300 (1), (3) and 302* A body of six persons attacked another with cattle goads in a violent and determined manner, inflicting sixteen wounds on his body and causing several and severe ruptures of his spleen, and so caused his death. The persons attacked was a strongly built man of 35 years of age, and his spleen was in a healthy state —*Held,* that such acts, committed by several persons on one, in such a manner, apparently regardless of the consequences, and with such results, warranted the inference that the acts were done by those persons with the intention either of causing the death of the person attacked or such injuries as the offenders knew to be likely to cause his death; and that the offence amounted to murder. ELEM MOLLA *v.* EMPEROR (1907)
I. L. R. 37 Calc. 315

MUTT.

See HINDU LAW—ENDOWMENT.

See MATH.

MUTT—*concld.*

——— *Held of a mutt whether trustee or life tenant of mutt properties.* It cannot be predicated of the head of a mutt, as such, that he holds the mutt properties as a life tenant or trustee. The question must be determined in each case upon the conditions on which they were given or which may be inferred from the long established usage and custom of the institution. *Giyana Sambandha Pandara Sannadhi* v *Kandasami Tambiran, I. L R 10 Mad 375,* referred to. *Vidyapurna Tirthaswami* v. *Vidyanidhi Tirthaswami, I. L. R. 27 Mad. 435,* referred to. KAILASAM PILLAI *v.* NATARAJA THAMPIRAN (1909)
I. L. R. 33 Mad. 265

MUTWALLI.

——— **mortgage by—**

See MAHOMEDAN LAW—ENDOWMENT.
I. L. R. 37 Calc. 179

——— **suit for the office of—**

See MAHOMEDAN LAW—ENDOWMENT.
I. L. R. 37 Calc. 263

N

NECESSARIES.

See CONTRACT Act (IX OF 1872), s 68.
I. L. R. 32 All. 325

NEGLIGENCE.

——— **Railway accident**—*Railway Company—Breach of statutory duty—Injury to passengers with arm outside carriage window—Contributary negligence—Contractual obligations* The fact that a door on a moving train is open is evidence, but not conclusive proof, of negligence on the part of the Railway Company. Where there is a statutory obligation, any breach of it which causes an accident is conclusive against the defendant apart from special proof of negligence But the breach must in itself be the cause of the accident, and the rule does not extend so far as to exclude the defence of contributory negligence In view of the contractual relations between the parties, a Railway Company is not liable for injuries caused to any part of a passenger which is outside the carriage in which he is travelling, provided that such injuries could not have been received had the passenger remained inside the carriage The application of the rule that, where there is negligence on both sides, the negligence of the person who had the last chance of averting the accident is the efficient cause thereof, must be restricted to cases where the danger was apparent to both or at least one of the parties before the accident actually happened. DULLABHJI SAKHIDAS *v.* G. I. P. RAILWAY CO. (1909)
I. L. R. 34 Bom. 427

NEGOTIABLE INSTRUMENT.

See NOTE OF HAND . **14 C. W. N. 414**

NEGOTIABLE INSTRUMENT—*concld.*

——— *Negotiable instrument, party to suit on—Limitation Act, s 22—Amendment by adding party cannot relate back to date anterior to application to add party* A suit on a negotiable instrument must be instituted in the name of the person who, on the face of the instrument, is entitled thereto or by a holder deriving title from him Where the suit is instituted in the name of a wrong person, the Court has power, under order I, rule 10 (*1*), to amend the plaint by bringing the proper party as plaintiff. Such person cannot be brought on the record as from the day the suit was instituted The amendment will relate back, at the most, to the date on which the application to be added as plaintiff was made and if such application was made after the right to sue was barred by limitation, such amendment should not be allowed In suits of this kind, a mistake to be corrected under order I, rule 10 (*1*), must be corrected before the limitation period of the suit expires *Seshamma* v *Chinnappa, I. L. R 20 Mad. 467,* referred to SUBBARAYA IYER *v.* VAITHINATHA IYER (1909) **I. L. R. 33 Mad. 115**

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881).

——— **s. 16**—*Endorsement, what constitutes—Holder in due course—Bill payable on demand, when overdue.* S. 16 of the Negotiable Instruments Act does not lay down any specific form of words for an indorsement A promissory note payable on demand was executed on 18th December 1901 On the 12th September 1904, the payee received the amount due on the note from one *S* and the following was indorsed on the note by the payee: "I have this day received from you, *S*, the sum of . . . due for principal and interest and assigned this note to you with power to recover the amount due under it by showing the same." No demand for payment was made before the 12th September 1904: *Held,* that *S* was an indorsee of the promissory note, that the promissory note was not overdue on the date of indorsement and that *S* was entitled as holder in due course to sue on the note SIVARAMAKRISHNA PATTAR *v.* MANGALASERI KUNHU MOIDEEN (1909)
I. L. R. 33 Mad. 34

NEWSPAPER CORRESPONDENT.

——— **statement of—**

See LIBEL . **I. L. R. 37 Calc. 760**

NEWSPAPER (INCITEMENTS TO OFFENCES) ACT (VII OF 1908).

——— **s. 3**—*Order—Forfeiture of press* S 3 of the Newspaper (Incitements to Offences) Act, 1908, provides for the making of a conditional order declaring the printing press used for the purpose of printing or publishing the offending newspaper to be forfeited The section refers to the whole of the press: and no order could be made under it limited only to such portions of the press

NEWSPAPER (INCITEMENTS TO OFFENCES) ACT (VII OF 1908)—*concld*

——— s. 3—*concld.*

as were employed in printing the offending newspaper DHONDO KASHINATH PHADKE, *In re* (1909) **I. L. R. 34 Bom. 327**

NIBANDHA.

See LIMITATION ACT, 1877, SCH. II, ARTS. 131, 62 . **I. L. R. 34 Bom. 349**

See TRANSFER OF PROPERTY ACT, SS. 55 (*6*) (*b*), 123 . **I. L. R. 34 Bom. 287**

NON-JUDICIAL STAMP.

See STAMP ACT (II OF 1899), S 52 **14 C. W. N. 1101**

NON-OCCUPANCY RAIYAT.

See CHOTA NAGPUR LANDLORD AND TENANT PROCEDURE ACT, S 6 **14 C. W. N. 297**

See LANDLORD AND TENANT **I. L. R. 37 Calc. 709**

NORTH-WESTERN PROVINCES AND OUDH ACTS.

——— 1869—I:

See OUDH ESTATES ACT.

——— 1876—XVII:

See OUDH LAND REVENUE ACT.

——— 1876—XVIII:

See OUDH LAWS ACT.

——— 1900—I:

See UNITED PROVINCES MUNICIPALITIES ACT.

——— 1901—II:

See AGRA TENANCY ACT.

——— 1901—III:

See UNITED PROVINCES LAND REVENUE ACT.

——— 1904—I:

See GENERAL CLAUSES ACT.

NOTE OF HAND.

——— Where a hand-note recited a loan and the liability of the executant to repay it, but there was no covenant that the re-payment would be made to the plaintiff or to his order: *Held*, that it was not a negotiable instrument under the Negotiable Instruments Act, s. 4 or s 28 of the Negotiable Instruments Act would not therefore apply to such a hand-note. Illustrations cannot control the plain meaning of the words of a statute Illustration (*b*) of s 4 of the Negotiable Instruments

NOTE OF HAND—*concld*

Act not relied on SATYA PRIYA GHOSAL *v.* GOBINDO MOHON RAY CHOWDRY (1909) **14 C. W. N. 414**

NOTICE.

See PROSECUTION **I. L. R. 37 Calc. 545**

——— disobedience of—

See CITY OF BOMBAY MUNICIPAL ACT (BOMBAY ACT III OF 1888), S. 305. **I. L. R. 34 Bom. 593**

——— of claim, to public officers—

See CANTONMENTS ACT (XIII OF 1889), S. 80 . . **I. L. 34 Bom. 583**

——— to co-sharers—

See PRE-EMPTION **I. L. R. 34 Bom. 567**

NUISANCE.

See BOMBAY MUNICIPAL ACT, 1888, S. 377. **I. L. R. 34 Bom. 346**

——— Calcutta Municipal Act, s. 632— *"Nuisance," building sanctioned by Municipality if may be—Nuisance if must be public—Building in contravention of regulations if to be proceeded against only under s 449—Partition decree, effect of.* The term "nuisance" in s. 632 of the Calcutta Municipal Act does not refer only to nuisances affecting the public generally. It applies as well to nuisances affecting an individual. The mere fact that the Municipality could have proceeded against a building erected contrary to the building regulations under s. 449 of the Act does not preclude the Municipal Magistrate from interfering with it under s 632 at the instance of the person whose house has been deprived of light and air by the building. If a building is a nuisance, it is no answer in a proceeding under s 632 to say that the Corporation had sanctioned it Whether erected with or without sanction, or in contravention of the building regulations or not, any person residing in Calcutta affected by it can move the Magistrate and it is within the jurisdiction of the Magistrate to pass an order under s. 632, if in his discretion he is so advised A partition decree previously passed which purported to specify the easements reserved to the portion which fell to the complainant, cannot be held to override the provisions of the Calcutta Municipal Act, which is directed to provide for public sanitation among other public conservations. BHAGWAN DAS *v* RASH BEHARI MULLICK (1909) . **14 C. W. N. 637**

NUNC PRO TUNC.

See AWARD . . **14 C. W. N. 759**

O

OATHS ACT (V OF 1840).

See CURATORS ACT (XIX OF 1841), SS. 3, 4, 14 . **I. L. R. 34 Bom. 115**

OATHS ACT (X OF 1873).

——— s. 4.

See "JUDICIAL PROCEEDING."
I. L. R. 37 Calc. 52

OBSTRUCTION OF PATHWAY.

See CRIMINAL PROCEDURE CODE, ss 133, 138, 139 . . 14 C. W. N. 544

OCCUPANCY HOLDING.

See AGRA TENANCY ACT (II OF 1901), s. 20 . . I. L. R. 32 All. 628

See AGRA TENANCY ACT (II OF 1901), s. 22 . . I. L. R. 32 All. 314

1. ——— **Mortgage**—*Suit by mortgagee—Co-sharer landlord who has purchased in execution of money decree if may question transferability of holding.* A co-sharer landlord who has purchased an occupancy-holding in execution of a decree of his own, cannot resist a mortgagee's suit to enforce his mortgage on the holding on the ground that the holding was non-transferable, he himself being a purchaser without the landlord's consent, taking the word landlord in its proper signification of the whole body of landlords. *Ayenuddin Nasya* v. *Srish Chandra Banerji, 11 C. W. N. 76*, followed. *Achanulla Sarkar* v. *Salemonessa Bibi, 9 C. W. N. xxiv*, not followed. HARO CHANDRA PODDER *v.* UMESH CHANDRA BHATTACHARJEE (1909) 14 C. W. N. 71

2. ——— **Transfer**—*Recognition by landlord—Receipt of rent from transferee as agent of transferor—Acquisition of occupancy right by adverse possession.* The receipt by the landlord of rent from a transferee of a holding, not on his own account but as an agent of the transferor is not a recognition of the transfer. *Nabakumari Debi* v. *Behari Lal Sen, 11 C. W. N. 865 : s c. I L. R. 34 Calc. 902*, distinguished. *Khoodeeram Chatterjee* v. *Rookhinee Boistobee, 15 W. R. 197*, and *Rasamoy Purkait* v. *Srinath Moyra, 7 C. W. N. 132*, referred to. Case remanded for trial of the question whether the transferee had acquired the right to hold the land as an occupancy raiyat by possession as a raiyat for a period of 12 years and by assertion of his title as such. DEBNARAIN DUTT *v.* BAIDYA NATH (MADAK) NAPIT (1909) 14 C. W. N. 68

OCCUPANCY RAIYAT.

See LANDLORD AND TENANT.
I. L. R. 37 Calc. 742

OCCUPANCY RIGHT.

See CHOTA NAGPUR LANDLORD AND TENANT PROCEDURE ACT, s. 6
14 C. W. N. 297

——— **extinguishment of**—

See LANDLORD AND TENANT.
I. L. R. 37 Calc. 709

OFFENCE.

See HIGH COURT, JURISDICTION OF.
I. L. R. 37 Calc. 287

——— **brought to the notice of Court in the course of judicial proceeding.**

See "COURT," MEANING OF.
I. L. R. 37 Calc. 642

OFFICIAL ASSIGNEE.

See INSOLVENCY . I. L. R. 37 Calc. 418

OFFICIAL TRUSTEE OF BENGAL

See PROBATE . I. L. R. 37 Calc. 387

OFFICIAL TRUSTEE'S ACT (XVII OF 1864).

See PROBATE . I. L. R. 37 Calc. 387

OMISSION BY MISTAKE.

See POWER-OF-ATTORNEY.
I. L. R. 37 Calc. 399

ONUS OF PROOF.

See DEATH, PRESUMPTION OF.
I. L. R. 37 Calc. 103

See LANDLORD AND TENANT.
I. L. R. 37 Calc. 723

OPIUM

1. ——— **Opium, illicit sale of**—*Proof of the factum of the sale—Presumption from inability to account satisfactorily for opium in absence of evidence of any sale—Opium Act (I of 1878), ss. 9, 10.* The effect of ss. 9 and 10 of the Opium Act, 1878, is that, when once it is proved that the accused has dealt with opium in one of the ways described in s 9, the *onus* of showing that he had a right so to deal with it is placed on him by s. 10. But the commission of the act, which is the foundation of the particular offence charged under s. 9, must be proved before the presumption raised by s. 10 comes into operation at all, and the presumption cannot be used to establish such act. Where, therefore, there is no evidence to prove the fact of any sale of opium by a person accused of illicit sale, the deficiency is not supplied by the statutory presumption, and a conviction of illicit sale is bad. ISHWAR CHANDRA SINGH *v* EMPEROR (1910)
I. L. R. 37 Calc. 581

2. ——— **Opium, illegal possession of**—*Opium Act (I of 1878), ss 9 (c), 10—Mere possession contrary to the Act without guilty frame of mind—Respective liabilities of owner of boat and crew—Presumption of commission of offence under the Act—"Conveyance"—Boat.* Under ss. 9 (c) and 10 of the Opium Act (I of 1878), mere possession of opium without being able to account for it satisfactorily, apart from any frame of mind, is an offence. The owner of a boat in which opium is found is in possession of it, but not the crew when they are neither owners nor jointly interested with him in any venture as an incident of which possession might be attributed

OPIUM—*concld.*

to them Where the owner of a boat alleged that opium was carried on board by a passenger without his knowledge, but there were circumstances disproving his story:—*Held*, that as he had not satisfactorily accounted for its possession, it must be presumed, under s. 10. that it was opium in respect of which he had committed an offence under the Act *Quære:* Whether a boat in which opium is carried is a " conveyance " used in carrying it so as to be liable to confiscation on conviction of the owner under the Act EMPEROR *v.* HAMID ALI (1909) . . . . **I. L. R. 37 Calc. 24**

See ASHRAF ALI *v.* EMPEROR.
I. L. R. 36 Calc. 1016; 14 C. W. N. 233

OPIUM ACT (I OF 1878).

——— **ss. 9, 10.**

See OPIUM . **I. L. R. 37 Calc. 581**

——— **ss. 9 (c), 10.**

See OPIUM, ILLEGAL POSSESSION OF.
I. L. R. 37 Calc. 24

ORAL AGREEMENT.

See EVIDENCE ACT, 1872, s 92.
I. L. R. 34 Bom. 59

ORDER ABSOLUTE.

——— **application for—**

See MORTGAGE . **I. L. R. 37 Calc. 796**

OUDH ESTATES ACT (I OF 1869).

——— **ss. 8, 22, sub-s. (11)**—*Succession to estate of taluqdar dying intestate whose name is entered in lists 1 and 5—Impartible estate—" Primogeniture," meaning of, in sanad granted by British Government in 1860—Effect of passing of Act No I of 1869—Lineal primogeniture and not nearness of degree.* A sanad granted to a taluqdar in 1860 contained the condition that " in the event of your dying intestate the estate shall descend to the nearest male heir according to the rule of primogeniture." After the passing of the Oudh Estates Act (I of 1869), his name was entered as a " taluqdar" in list 1, and in list 5, which was a list " of the grantees to whom sanads or grants may have been or may be given or made by the British Government up to the date fixed for the closing of the list, declaring that the succession to the estates comprised in such sanads or grants shall thereafter be regulated by the rule of primogeniture." *Held*, that the meaning of the word " primogeniture " in the sanad was the ordinary meaning of the same word in the law of England. On the death of the taluqdar's widow the succession to his estate was contested by his cousin the respondent, who would be the heir if the succession was governed by the rule of lineal primogeniture, and his uncle, who would succeed if it was regulated by nearness of degree. *Held*, that the question whether the estates of taluqdars for the purposes of intestate succession must be treated as impartible, is settled by authority in the affirmative: *Ran Bijai Bahadur Singh* v. *Jagatpal Singh, I. L. R. 18 Calc. 111; L. R. 17 I. A. 173* and *Jagdish Bahadur* v *Sheo Partab Singh, I. L. R 23 All 369; L R 28 I A. 100.* The succession therefore to a taluq must be to an impartible estate, whether the estate " ordinarily devolved upon a single heir " as in list 2 of s. 3, or whether the succession was to be regulated by the rule of primogeniture as in lists 3 and 5 of s. 8. S. 22, in so far as it describes in the first ten of its sub-sections the specific order of heirs preferred to the succession, must have force given to it to the effect of standing as a statutory substitute for any line of succession set forth in the sanad Where sub-s. 11 of s. 22, coming as it does at the close of the long list of specific stages of prescribed succession, sets up the rule that in default of any one taking under the previous sub-sections there should be preferred " such persons as would have been entitled to succeed to the estate under the ordinary law to which persons of the religion and tribe of such taluqdar, etc, are subject," it must be construed as being a general relegation of parties to the situation in which they would have been found apart from the Act In the present case that situation was found in the sanad itself, and was also contained, either by way of affirmance, or at least by way of narrative in list 5 of s. 8 of the Act. While the specific rules of succession in Act I of 1869 must be held to displace this, the general reference to what is not covered by those specific rules must include a reference to the rights of parties ascertained in the sanad which was the original title to the property. On these principles and this construction: *Held*, (affirming the decision of the Court of the Judicial Commissioner), that the succession should be regulated by the rule of lineal primogeniture and not by nearness of degree and that the respondent was entitled to succeed DEBI BAKHSH SINGH *v.* CHANDRABHAN SINGH (1910) . **I. L. R. 32 All. 599**

OUDH ESTATES ACT (I OF 1869)—*contd.*

——— **s. 8**—*concld.*

——— **ss. 13, 16 and 17**—*Transfer of immoveable property in Oudh—Oral gift inter vivos—Transfer of Property Act (IV of 1882), s. 123—Deed, construction of—Whether testamentary or deed of gift inter vivos—Legatee pre-deceasing testator.* Under the Oudh Estates Act (I of 1869) immoveable property is not transferable by gift *inter vivos* otherwise than by registered deed. Although an adopted son is exempt from the operation of s. 13, as being one of the special class therein designated, a gift to him to be valid must comply with the provisions of ss. 16 and 17 of the Act; the two sets of sections not being contradictory of each other By a deed, dated the 5th May, 1887, executed by a taluqdar in favour of his adopted son, the predecessor in title of the appellant, the executant (after stating that he had by a deed of will on 26th May 1883, appointed his adopted son as his successor to the whole of the property, and that it had become necessary to alter some of the provisions of that deed), declared that it was written " by way of deed of adoption and codicil to a will," and that he had made over the whole of the

OUDH ESTATES ACT (I OF 1869)—*concld.*

———— **ss. 13, 16 and 17**—*concld.*

property in suit to his adopted son, and had absolutely and unconditionally relinquished all right and proprietorship as well as ceased interference with the property. In a subsequent clause he described the person in whose favour the deed was made as " my adopted son and donee and legatee under the deed, dated the 26th May, 1883, as well as under this deed . . . . in respect of all my moveable and immoveable property which has already been acquired, or which may be acquired hereafter during my lifetime or which may come to me by inheritance, or to which I may become entitled " *Held* (affirming the decision of the Court of the Judicial Commissioner), that on a consideration of the provisions of the deed, and of the circumstances which led up to its execution, it was testamentary in character, and could not be construed as a gift *inter vivos* to the appellant's predecessor in title, who predeceased his adoptive father. In styling him " donee " the deed referred simply to what was given him by the deed and codicil. UDAI RAJ SINGH *v.* BHAGWAN BAKHSH (1910) . . **I. L. R. 32 All. 227**

OUDH LAND REVENUE ACT (XVII OF 1876).

See PRE-EMPTION **I. L. R. 32 All. 351**

OUDH LAWS ACT (XVIII OF 1876).

See MAHOMEDAN LAW—MARRIAGE. **I. L. R. 32 All. 477**

———— **s. 9, cls.** (*1*), (*2*).

See PRE-EMPTION . **I. L. R. 32 All. 351**

P

PARDON.

———— **Forfeiture of pardon**—*Proper Court to determine the question of forfeiture—Withdrawal of pardon by the Court granting it—Power of the Special Bench to re-open the question on a plea of pardon taken at the trial for the original offence in respect of which it was granted—Criminal Procedure Code (Act V of 1898), ss. 337, 339.* Where an approver, to whom a pardon was granted under s. 337 of the Criminal Procedure Code by the committing Magistrate, resiles, at the hearing of the case before the Special Bench, from his deposition given before such Magistrate, the Special Bench can only discharge him, but cannot take any action against him for the offence in respect of which he was accorded the pardon. If he is proceeded against for the original offence, the committing Magistrate who granted the pardon must determine whether he has complied with its terms of not, and thereby forfeited the same; and the question cannot be reopened at his trial before the Special Bench for such offence. *Queen-Empress* v. *Manick Chandra Sarkar, I. L. R. 24 Calc. 492*, approved of. *Emperor* v. *Kothia, I. L. R. 30 Bom. 611*, and *Kullan* v. *Emperor, I. L. R. 32 Mad. 173*, referred to. *King-Emperor* v *Bala, I. L. R 25 Bom 675*, distinguished. EMPEROR *v.* ABANI BHUSHAN CHUCKERBUTTY (1910) . **I. L. R. 37 Calc. 845**

PARLIAMENT, PROCEEDINGS IN.

See LIBEL . **I. L. R. 37 Calc. 760**

PARTIES.

See ADMINISTRATION SUIT. **I. L. R. 34 Bom. 420**

See CIVIL PROCEDURE CODE, 1882, s 368. **I. L. R. 32 All. 301**

See CONTRACT ACT (IX OF 1872), s 45 **I. L. R. 32 All. 638**

See HINDU LAW—JOINT FAMILY. **I. L. R. 32 All. 183**

See RECEIVER . **14 C. W. N. 653**

———— **addition of**—

See REMAND . **I. L. R. 37 Calc. 171**

———— **death of**—

See ARBITRATION . **14 C. W. N. 759**

———— **joinder of**—

See CIVIL PROCEDURE CODE, 1882, s. 30. **I. L. R. 32 All. 284**

See LIMITATION ACT, 1877, ss 22, 28 **I. L. R. 34 Bom. 91**

1. ———— **Addition of parties**—*Limitation Act (XV of 1877), s. 22—Changing character of defendant after period of limitation for suit has expired—Amendment of Plaint—Civil Procedure Code (Act XIV of 1882), ss. 32, 53, 582—Suit against Debuttar estate—Expenses necessary for Debuttar estate—Indemnity to estate of former sebait by successor—Liability of Debuttar estate.* The parties to this litigation were the descendants of a testator, who by his will dedicated immoveable property to the performance of the worship of certain idols and other pious acts, and provided for the order of succession to the office of sebait among his descendants. The suit was instituted on 25th January 1897 by the respondents as executors of a deceased sebait against the appellant, who had been appointed receiver of the debuttar estate, for money which, owing to interference and obstruction by the appellant in the collection of the rents, had not been received by the deceased sebait during his sebaitship, and for expenses he had consequently been obliged to pay out of his private funds to protect the estate, and enable him to perform his obligations as sebait. All the other surviving descendants of the testator were made parties, and the appellant was sued both in his capacity as receiver and in his personal capacity. After the expiration of the period of limitation prescribed for the suit, an amendment of the plaint was made by the Court adding to it a prayer that it might be determined who was the sebait, and

PARTIES—*contd.*

that the debuttar estate should be represented by the person declared to be entitled to the sebaitship The appellant was found to be so entitled and was impleaded as sebait :—*Held*, affirming the decision of the High Court, that the object of the amendment was merely to determine judicially which of the living descendants of the original testator, all of whom were already parties to the suit, was to be considered sebait It did not alter the character of the suit, nor amount to the addition of a new defendant within the meaning of s. 22 of the Limitation Act (XV of 1877), and the suit was therefore not barred. *Held*, also, that the estate of the deceased sebait was entitled to be reimbursed all sums properly expended by him in the preservation of the debuttar estate (as payment of Government revenue and the like), and in defending his position as sebait which was challenged unsuccessfully by the appellant *Walters* v. *Woodbridge, L R 7 Ch D. 504*, followed The respondents were also entitled to recover all moneys properly expended by the deceased sebait in performing the obligations imposed upon him by the original testator's will The right of indemnity was incident to the position of a trustee, and the liability in respect of that indemnity was the first charge on the trust estate PEARY MOHUN MUKERJEE *v.* NARENDRA NATH MUKERJEE (1909) **I. L. R. 37 Calc. 229**

2. ——— Where a landlord sued a transferee of the tenant's rights in ejectment on the ground that the transfer was unauthorised, and the defence admitted the transfer but urged that it was not a valid transfer : *Held*, that the transferor who applied to be added as a defendant, setting up a contemporaneous agreement for retransfer and alleging that the transaction was really a mortgage by conditional sale and that he was still in possession, should have been added as a party defendant by the Court although plaintiff opposed the application, in order to avoid a multiplicity of suits and to insure a final determination of the dispute in the presence of all the parties interested. The Court does not, except in special circumstances, force a defendant upon the plaintiff. The test to be applied is whether his presence before the Court is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter. *Montgomery* v. *Foy*, [*1895*] *2 Q. B 321* · *Mc Cheane* v. *Gyles*, [*1902*] *1 Ch 911*, referred to The judgment of the Judicial Committee in *Amir Hassan Khan* v. *Sheo Baksh Singh, I. L. R. 11 Calc. 6*, does not furnish any test for determining under what circumstances a subordinate Court may be said to have acted illegally or with material irregularity within the meaning of s. 115, Civil Procedure Code The High Court is not precluded by the terms of s. 115, Civil Procedure Code, from interfering with an order granting or refusing applications for adding parties. *Held*, that the High Court ought to set aside the order in the present case refusing the transferor's application to be made a party, as

PARTIES—*concld.*

otherwise the result would be a needless multiplicity of suits and possible injustice to the petitioner. Scope and operation of s 115, Civil Procedure Code, considered with reference to authorities. DWARKA NATH SEN *v.* KESORY LAL GOSWAMI (1910) . . . . **14 C. W. N. 703**

PARTITION.

See CIVIL PROCEDURE CODE, 1882, s. 396. **I. L. R. 32 All. 319**

See ESTATES PARTITION ACT (BENG V OF 1897), s 7 . **14 C. W. N. 632**

See HINDU LAW—JOINT FAMILY **14 C. W. N. 221**

See HINDU LAW—PARTITION. **I. L. R 37 Calc. 703** **I. L. R. 34 Bom. 106**

See HINDU LAW—SELF-ACQUISITION. **I. L. R. 32 All. 305**

See PRE-EMPTION . **I. L. R. 32 All. 567**

See TITLE, SUIT FOR. **I. L. R. 37 Calc. 662**

See UNITED PROVINCES. LAND REVENUE ACT (III OF 1901), ss 111, 112 **I. L. R. 32 All. 523**

See VENDOR AND PURCHASER. **I. L. R. 37 Calc. 362**

1. ——— **Appeal**—*Appeal against preliminary decree after passing of the final decree.* After the passing of the final decree in a suit for partition, no appeal will lie which does not challenge the final as well as the preliminary decree. *Mackenzie* v. *Nar Singh Sahai, I. L. R. 36 Calc. 762*, followed. *Uman Kunwari* v *Jarbandhan, I L. R. 30 All. 479*, distinguished. KURIYA MAL *v.* BISHAMBHAR DAS (1910) . . . **I. L. R. 32 All. 225**

2. ——— **Right to partition**—*Partition between owner of fractional share in zemindari interest, and mokararidars in joint possession—Interest not less permanent because the mokarari lease was liable, in certain events, to forfeiture.* The right of partition exists when two parties are in joint possession of land under permanent titles, although their titles may not be identical *Hemadri Nath Khan* v. *Ramani Kanta Roy, I. L. R 24 Calc. 575*, cited with approval The appellants, plaintiffs in a suit for partition, were proprietors of a *mokarari* interest in the property, partition of which was sought, and the respondents, defendants in the suit, were owners of a fractional share in the zemindari interest in the same property. The *mokarari* lease was, in certain contingencies, liable to forfeiture, and the High Court held that the appellants' tenure was on that account not sufficiently permanent to support their claim to partition, to which they would otherwise have been entitled :—*Held*, by the Judicial Committee (reversing that decision), that the distinction drawn by the High Court could not be supported. The appellants' title was a permanent one, though

PARTITION—*concld.*

liable to forfeiture in events which had not occurred and the rights incidental to that title must be those that attached to it as it existed, without reference to what might be lost in the future under changed circumstances. BHAGWAT SAHAI *v* BIPIN BEHARI MITTER (1910) . **I. L. R. 37 Calc. 918**

3. _____ **Suit for partition of family property**—*Subsequent suit by one defendant against another for declaration of title—Res judicata* Where a suit for partition, to which all the members of the family are parties, has once been finally decided, it is not competent to a party defendant to such suit to reopen the questions thereby determined in a fresh suit for a declaration of right as against a co-defendant. *Sheikh Khoorshed Hossein* v. *Nubbee Fatima, I. L. R. 3 Calc. 551, Dost Muhammad Khan* v. *Sard Begam, I. L. R. 20 All 81, Assan* v. *Pathumma, I. L. R. 22 Mad. 494,* and *Ashidbai* v. *Abdulla Haji Mahomed, I. L. R. 31 Bom 271,* referred to. PARSOTAM RAO TANTIA *v.* RADHA BAI (1910) . . **I. L. R. 32 All. 469**

PARTITION DECREE.

See NUISANCE . **14 C. W. N. 637**

PARTNERSHIP.

See CONTRACT ACT (IX OF 1872), S 45.
I. L. R. 32 All. 638

_____ **suit for dissolution of—**

See COURT FEES ACT (VII OF 1870), S. 7, SCH. II, CLS. 3, 4.
I. L. R. 32 All. 517

See SOLICITOR'S LIEN FOR COSTS.
I. L. R. 34 Bom. 484

_____ **Arbitration**—*Accounts—Managing partners, liability of—Onus—Reference to arbitration of claim of firm against customers by one partner, when binds firm—Reference after suit for dissolution.* One partner is not competent without special authority to bind the firm by a submission to arbitration. *Administrator-General* v. *Official Assignee, I. L. R 32 Mad. 462,* distinguished. *Rambharose* v. *Kallu Mal, I. L. R. 22 All. 135; Duttoobhoy* v *Vallu, 1 Bom. L. R. 828,* approved. The liability of co-partners to account, and how and to what extent it arises discussed HAZI MAHAMMAD AKBAR *v.* DWARKA NATH SIRKAR (1910)
14 C. W. N. 1106

PARTNERSHIP ACCOUNTS, SUIT FOR.

_____ *Suit for partnership accounts—Limitation Act (IX of 1908), Art 106—Specific assets realised within period of limitation.* If a suit for general partnership accounts and a share in partnership profits is itself barred, the plaintiff in such a suit cannot be allowed to proceed speculatively against any and every partnership asset which may have been realised by the defendant after dissolution and within the period of limitation. *Merwanji Hormusji* v. *Rustomji Burjori, I. L. R. 6 Bom 628,* distinguished. AHMED SULEMAN *v.* BHAGWANDAS VISRAM AND CO. (1909) . . . **I. L. R. 34 Bom. 515**

PARTNERSHIP ACCOUNTS, SUIT FOR—*concld*

PASSENGER.

See CONTRIBUTORY NEGLIGENCE
I. L. R. 34 Bom. 427

PASSING-OFF ACTION.

See TRADE-MARK **I. L. R. 37 Calc. 204**

PASTURE LANDS.

_____ **Tenancy if permanent**—*Chairamna holdings—Occupancy right, acquisition of, in—Using land for purposes of cultivation, if waste—Remedy of landlord—Forfeiture—Landlord and Tenant Act (X of 1859), s. 6—Bengal Tenancy Act (VIII of 1885), s. 5 (2)—Notice—Service—Transfer of Property Act (IV of 1882), ss 106, 108 (o), 111 (g)* The question being whether certain holdings situated in the tract known as *chairamna* or pasture lands in Mouzah Basantpur in Zillah Purnea were permanent tenancies, it was proved that sales by private treaty and by auction through Court of such holdings were frequent, that cases of ejectment were uncommon, that such holdings frequently passed to the heirs of the deceased tenants and that mutation of names in the zemindar's *sherista* had been frequently allowed sometimes on payment of *nazarana* and sometimes without: *Held*, that the proper inference to be drawn from these circumstances was that the tenants had a permanent right in the holdings and were not liable to ejectment or notice. *Per* Doss, *J.*—That assuming that the lands were settled with the tenants only for the purpose of grazing cattle, the tenants had acquired a right of occupancy in the lands before the Bengal Tenancy Act came into force under s. 6 of Act X of 1859, *Fitz Patrick* v *Wallace. 11 W R 231,* followed. That it was not reasonable to hold that at the inception of the tenancies it was intended by the parties that the lands were never to be used for cultivation, and the tenants were raiyats within the meaning of s. 5, sub-s. (2) of the Bengal Tenancy Act. Per RICHARDSON, *J.*—The tenants had failed to prove that the lands were let for purposes of cultivation or that they had acquired occupancy right therein. That by using the lands intended for grazing for purposes of cultivation the tenants did not incur forfeiture. SHEIKH LATIFAR RAHAMAN *v.* A. H. FORBES (1909) . **14 C. W. N. 372**

PATNIDARS AND DAR-PATNIDARS.

_____ **rights of—**

See CHAUKIDARI CHAKRAN LANDS.
I. L. R. 37 Calc. 57

PAUPER SUIT.

See CIVIL PROCEDURE CODE, 1908, s. 115.
I. L. R. 32 All. 623

PAUPER SUIT—*concld.*

——— *Application to sue as*—*Disqualification*—*Subject-matter of suit*—*Cause of action*—*Civil Procedure Code (Act V of 1908), order XXXIII, rules 1, 2 and 5* A mortgagor applied for permission to institute a suit as a pauper for the setting aside of a sale of the mortgaged property by the mortgagee, with an alternative claim for damages The mortgagee admitting there was a surplus due to the applicant after the mortgage-debt had been satisfied, paid R101 into Court, and contended that the applicant was not a pauper, and further that the applicant disclosed no cause of action *Held*, that the applicant was a "pauper" within the meaning of the Explanation to order XXXIII, rule 1, of the Civil Procedure Code (Act V of 1908), but that the allegations contained in the application did not disclose a cause of action. *Dwarkanath* v. *Madhavrav, I. L. R. 10 Bom 207*, not followed. FATMABAI v. DOSSABHOY RUSTOMJI UMRIGAR (1909)
I. L. R. 34 Bom. 638

PAYMENT INTO COURT.

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 83 . **I. L. R. 32 All. 142**

PENAL CODE (ACT XLV OF 1860).

——— **s. 76**—*Evidence Act (I of 1872), s 105*—*Question whether act done by accused falls within general exceptions*—*Evidence*—*Presumption*—*Pleadings.* Where an accused person has raised pleas inconsistent with a defence which would bring his case within one of the general exceptions in the Indian Penal Code, he cannot, in appeal, set up a case, based upon the evidence taken at his trial, that his act came within such general exception. Circumstances which would bring the case of an accused person within any of the general exceptions in the Indian Penal Code, can and may be proved from the evidence given for the prosecution or to be found elsewhere in the record; but there must be evidence upon which such circumstances can be found to exist, and when they are not shown to exist, the Court is not competent to assume, more particularly when the pleas taken are inconsistent with such assumption, that such circumstances might have existed or that doubt may arise in consequence of such assumption, and the accused ought to be given the benefit of the doubt *Queen-Empress* v. *Timmal, I L. R 21 All 122*, referred to. EMPEROR *v* WAJID HUSSAIN (1910)
I. L. R. 32 All. 451

——— **ss. 107, 108, 121, 124A—Waging of war, abatement of**—*Sedition.* The accused published a book containing eighteen poems, of which four were the subject-matter of the charge. The general trend of the poems charged, as well the remaining ones in the book evinced a spirit of blood-thirstiness and murderous eagerness directed against the Government, conveyed the urgency of taking up the sword and made an appeal of blood-thirsty incitement to the people to take up the sword, form secret societies, and adopt guerilla warfare for the purpose

PENAL CODE (ACT XLV OF 1860)—*contd.*

——— **s. 107**—*concld.*

of rooting out the British rule. *Held*, that the accused committed the offence of abetting the waging of war (s. 121 of the Indian Penal Code) by the publication of the poems charged. *Held* further, that the Court was entitled to look into the poems other than those forming the subject-matter of the charge for the purpose of finding out the intention of the writer and the design of the publication. *Per* CHANDAVARKAR, *J*—Under the Indian Penal Code, the waging or levying of war and the abetting of it are put upon the same footing by s. 121: that is, the abetting of waging of war is under the Code as much an offence of treason as the waging of war itself The word "abetment" is defined in s. 107 of the Code and one of its meanings, as given there, is "instigating any person to do anything" This meaning is not excluded by anything that occurs in s 121 The general law is laid down in ss 107—120 of the Code According to it, "to constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused" This applies to the abetment of the waging of war against the King as much as to the abetment of any other offence under the Code. The only difference created between the former offence and other offences is that, while under the general law as to abetment a distinction is made for the purposes of punishment between abetment which has succeeded and abetment which has failed, s 121 does away with that distinction so far as the offence of waging war is concerned, and deals equally with an abettor whose instigation has led to a war and one whose instigation has taken no effect whatever. And that for this simple reason that such a crime more than any other must be sharply and severely dealt with at its very first appearance and nipped in the bud with a strong hand. *Per* HEATON, *J*—Under s 107 of the Indian Penal Code there may be an instigation of an unknown person. The word "abet" as used in s. 121 of the Code has the same meaning as is given to it by s. 107. The "abetment" meant by s. 121 is not necessarily confined to abetment of some war in progress There may be, and usually is, instigation of rebellion before rebellion actually begins: that kind of instigation is under the Code abetting waging war against the King. So long as a man only tries to inflame feeling, to excite a state of mind, he is not guilty of anything more than sedition. It is only when he definitely and clearly incites to action that he is guilty of instigating and therefore abetting the waging of war. EMPEROR *v.* GANESH DAMODAR SAVARKAR (1910)
I. L. R. 34 Bom. 394

——— **ss. 121, 121A.**

See JURY, RIGHT OF TRIAL BY.
I. L. R. 37 Calc. 467

——— **s. 182.**

See ACQUITTAL . **I. L. R. 37 Calc. 604**

PENAL CODE (ACT XLV OF 1860)—*contd.*

——— **s. 182**—*concld.*

See FALSE INFORMATION.
14 C. W. N. 765

——— **s. 186**—*Voluntarily obstructing Public Servants in the discharge of their public functions—Releasing property attached by Civil Court peons under distress warrants issued under the Public Demands Recovery Act (Beng. I of 1895) and the Village Chaukidari Act (Beng. VI of 1870), s 45—Legality of Warrant—Omission to specify date of extension on the face of it—Civil Procedure Code (Act V of 1908), order XXI, rule 24 (2)—Execution by person not named in the warrant—Delegation of powers by Nazir.* A distress warrant issued under the Public Demands Recovery Act which has been extended beyond the original date of return, but does not bear on the face of it the altered date, is not a legal warrant under order XXI, rule 24 (2) of the Civil Procedure Code. A warrant under s 45 of the Village Chaukidari Act must contain the name of the person charged with the execution thereof and cannot be legally executed by any other person delegated by the former for that purpose. Where the accused released certain buffaloes attached by the Civil Court peons, on the 2nd August, under two warrants addressed to the nazir, but endorsed by him to them, the one issued under the Public Demands Recovery Act, which was originally returnable by the 26th July but had been extended to the 8th August, without the alteration of the date appearing thereon, and the other under s 45 of the Village Chaukidari Act directed to the nazir but without naming any person therein as charged with the execution of it:—*Held*, that they were not guilty of an offence under s. 186 of the Penal Code, as the peons were not lawfully executing the warrants. SHEIK NASUR *v* EMPEROR (1909)
I. L. R. 37 Calc. 122

——— **s. 188.**

See SANCTION FOR PROSECUTION
14 C. W. N. 234

——— **s. 193.**

See CRIMINAL PROCEDURE CODE, SS. 157, 159, 476 . **I. L. R. 32 All. 80**

——— **s. 193, expl. (2).**

See JUDICIAL PROCEEDING
I. L. R. 37 Calc. 52

——— **s. 225B**—*Escape from lawful custody—Defaulting co-sharer arrested under warrant of Tahsildar—Rules of Board of Revenue, rule 9, cl. (2)—Act (Local) No. III of 1901 (United Provinces Land Revenue Act), ss. 142, 143, 146.* Where a Tahsildar issued a warrant under s. 146 of the United Provinces Land Revenue Act against certain defaulting co-sharers, and they were arrested, but subsequently escaped from detention: *Held*, that this was an escape from lawful custody within the meaning of s. 225B of the Indian Penal Code. The Tahsildar's warrant was not illegal because the Board had directed that process should 'ordinarily' issue in the first instance against the lambardar EMPEROR *v.* GULAB SINGH (1909)
I. L. R. 32 All. 116

PENAL CODE (ACT XLV OF 1860)—*contd.*

——— **s. 225B**—*concld.*

——— **ss 300 (1), 302.**

See MURDER . **I. L. R. 37 Calc. 315**

——— **s. 329.**

See CRIMINAL PROCEDURE CODE, SS. 109, 123, 397 . **I. L. R. 34 Bom. 326**

——— **s. 379.**

See THEFT . **14 C. W. N. 408; 936**

——— **s. 408.**

See CRIMINAL PROCEDURE CODE, SS. 182 AND 531 . **I. L. R. 32 All. 397**

——— **ss. 408, 467.**

See CRIMINAL PROCEDURE CODE, SS. 233—236, 239 . **I. L. R. 32 All. 219**

——— **ss. 465, 471, 477A.**

See MISAPPROPRIATION **14 C. W. N. 82**
I. L. R. 36 Calc. 955

——— **s. 471.**

See FORGERY . **I. L. R. 38 Calc. 75**
14 C. W. N. 1076

——— **s. 477A.**

See CRIMINAL PROCEDURE CODE, SS. 234, 235, 537 . . **I. L. R. 32 All. 57**

1. ——— **s. 494. "Person aggrieved"**—*Bigamy—Criminal Procedure Code, s 198—Procedure—Commitment* In a case of bigamy the person aggrieved is either the first husband or the second husband and not the father. Where a complaint was preferred by the father of the first husband, which resulted in a commitment on a charge under s 498 of the Indian Penal Code, it was *held* that the commitment was bad. EMPEROR *v* LALA (1909) . . . **I. L. R. 32 All. 78**

2. ——— **Bigamy**—*Re-marriage of Hindu having Christian wife alive.* A Hindu convert to Christianity married a Christian woman according to the rites of the Roman Catholic religion. Subsequently, and during the lifetime of his Christian wife, he reverted to Hinduism and married a Hindu woman in accordance with the rites of the class to which the parties belonged:—*Held*, the offence of bigamy was not committed. EMPEROR *v.* ANTONY (1910)
I. L. R. 33 Mad. 371

——— **ss. 511, 124A**—*Attempt to commit offences—Attempt to commit the offence of sedition—Intention, a question of fact.* Under the Indian Penal Code (Act XLV of 1860) all that is necessary

PENAL CODE (ACT XLV OF 1860)—*concld.*

———— **s. 511**—*concld.*

to constitute an attempt to commit an offence is some external act, something tangible and ostensible of which the law can take hold as an act showing progress towards the actual commission of the offence. It does not matter that the progress was interrupted. An attempt to publish sedition is complete as soon as the accused knowingly sells a copy containing the seditious article. It is none the less an attempt because something external to himself happens which prevents a perusal of the article by the buyers or any other member of the public. In cases of sedition, the question of intention is one of fact. EMPEROR *v.* GANESH BALVANT MODAK (1909) **I. L. R. 34 Bom. 378**

PENALTY.

See CONTRACT ACT (IX OF 1872), S. 74.
I. L. R. 32 All. 448

PENSION.

See PENSIONS ACT (XXIII OF 1871), S. 6
I. L. R. 32 All. 148

PENSIONS ACT (XXIII OF 1871).

———— **s. 6—Sanad, construction of**—*Certificate giving Court jurisdiction to try suit—Grant of soil of village not a grant of land revenue—Non-production of certificate at time of institution of suit—Grant on payment of quit rent.* A village, portion of the subject of a suit for partition, was granted to the ancestor of the parties by Maharaja Scindia of Gwalior in 1861, and the grant was confirmed in 1866 by the British Government in a sanad which declared that the village in question "shall be continued to the grantee and his heirs inclusive of all lands, allowances and rights belonging to others so long as he and his heirs shall continue loyal to the British Government, and shall pay R800 to Government as a quit rent." In a later portion of the sanad there was a guarantee against any further payment by the holder "on account of Imperial Land Revenue beyond the amount specified," and a declaration that the village and its holder shall be liable for any local taxation which may be imposed on the district generally. *Held* (affirming the decision of the High Court), that the sanad was not a grant of Land Revenue, but of the soil of the village itself, and therefore the Pensions Act (XXIII of 1871) did not apply: but, even if it did, the Subordinate Judge had rightly held that an order made by the Revenue Court referring the plaintiff (respondent) to a suit in the Civil Court was equivalent to a certificate under s. 6 *Semble:* The non-production of a certificate under s. 6 of the Pensions Act at the time of the institution of a suit for which such a certificate is necessary, is not a bar to the maintenance of the suit, but is a defect which may be cured by obtaining the certificate at a later stage of the proceedings. GANPAT RAO *v.* ANANT RAO (1909) . **I. L. R. 32 All. 148**

PENSIONS ACT (XXIII OF 1871)—*concld.*

———— **ss. 6, 8, 11—Toda giras allowance**—*Purchase of the rights to receive allowance at a Court-sale—The allowance entered in the name of the purchaser—Application by heirs of the purchaser to receive arrears of allowance—Certificate of Collector.* It was directed by a decree that the purchaser at a Court sale of a Toda giras allowance should recover from the Collector the amount due for arrears of the allowance from the date of his purchase. An application to execute this decree was made in 1864, in consequence of which the decree-holder's name was entered in the Collector's books as the person entitled to the allowance in question, and the arrears up to 1864 were paid. In 1903, the decree-holder's heirs applied to the Court to recover the arrears of allowance that had remained unpaid since 1896. The Collector contended that the application could not be entertained in the absence of a certificate from the Collector under the provisions of s. 6 of the Pensions Act, 1871. *Held,* overruling the contention, that the power of the Collector under the Act had been exhausted and there was no discretion for that officer to exercise either under the Act or the rules, so far as the applicant's right to recover the arrears that had become due in the life-time of the last holder, was concerned. *Held,* further, that if those amounts remained unpaid, the Collector held them for and on behalf of the last holder, as moneys due to him, and as moneys therefore recoverable on his death by his heirs independently of any question which might arise under the Pensions Act, 1871, or the rules framed thereunder. CHHAGANLAL *v.* PRANJIVAN (1909)
I. L. R. 34 Bom. 154

PERIOD.

———— **expiry of the**—

See TRANSFER OF PROPERTY ACT, S. 67.
I. L. R. 34 Bom. 462

PERMANENT AGRICULTURAL TENURE.

See LANDLORD AND TENANT.
I. L. R. 37 Calc. 723

PERMANENT IMPROVEMENTS.

See VENDOR AND PURCHASER.
I. L. R. 37 Calc. 362

PERMANENT TENURE.

See TITLE, SUIT FOR.
I. L. R. 37 Calc. 662

PERPETUAL INJUNCTION.

See INJUNCTION . **I. L. R. 37 Calc. 731**

PERPETUITIES.

See PUTNI LEASE . **14 C. W. N. 601**

PERSONAL DEBT.

See PUTNI TENURE.
I. L. R. 37 Calc. 747

PERSONAL DECREE.

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 90 . **I. L. R. 34 Bom. 540**

PLAINT.

See PLEADINGS . **I. L. R. 37 Calc. 856**

See PRACTICE . **I. L. R. 34 Bom. 244**

——— **amendment of—**

See CIVIL PROCEDURE CODE, 1882. **I. L. R. 34 Bom. 250**

See LIMITATION ACT, 1877, S. 8 **14 C. W. N. 128**

See PARTIES . **I. L. R. 37 Calc. 229**

——— **reection of—**

See JURISDICTION **I. L. R. 34 Bom. 267**

——— **Amendment**—*Plaint, amendment of, by party to whom it is returned for proper valuation.* A plaintiff, to whom a plaint was returned for properly valuing the properties claimed therein, altered the valuation as directed therein and struck out some of the properties to bring the suit within the jurisdiction of the Court : *Held*, that there was nothing illegal in the amendment and that it was competent to the Court to accept such amended plaint. KARUMBAYIRA PONNAPUNDAN *v.* AUTHIMOOLA PONNAPUNDAN (1909) **I. L. R. 33 Mad. 262**

PLAINTIFF.

——— **non-appearance of—**

See APPEAL . **I. L. R. 37 Calc. 426**

PLEADER.

See LEGAL PRACTITIONER. **14 C. W. N. 521**

See PRACTICE . **I. L. R. 34 Bom. 408**

1. ——— **Pleader, right of retainer of**—*Has no right to retain moneys in one cause for dues in another cause.* A pleader in India has no right of retainer in moneys realised by him in one cause for his dues in other causes conducted by him. NARAYANASWAMI NAIDU *v.* CHELLAPALLI HANUMANULU (1909) . **I. L. R. 33 Mad. 255**

2. ——— **Pleader's authority to compromise**—*Deccan Agriculturists' Relief Act (XVII of 1879), s. 12—Compromise of the case—Court's duty to record the compromise—Pleader's compromising without authority from his client—Client to apply to cancel the compromise.* Where a party complains that compromise effected in his name was unauthorised, he must move the Court to cancel all that has been done and to revive the suit. PIRAJI *v.* GANAPATI (1910) **I. L. R. 34 Bom. 502**

PLEADINGS.

1. ——— **Fraud**—*Fraud, sole ground of relief—Alteration of ground of relief by picking out facts from allegations in the plaint—Defendant's duty in cases based on fraud.* Where pleadings are so framed as to rest the claim for relief solely on the ground of fraud, it is not open to the plaintiff, if he fails in establishing the fraud, to pick out from the allegations in the plaint facts which might, if not put forward as proofs of fraud, have yet warranted the plaintiff in asking for relief. A defendant, in answering a case founded on fraud, is not bound to do more than answer the case in the mode in which it is put forward. *Hickson* v. *Lombard, L. R. 1 H. L. 324*, and *Guthrie* v *Abool Mozuffer Nooroodin Ahmed, 15 W. R. P C 50*, referred to RAJENDRA KUMAR BOSE *v.* GANGARAM KOYAL (1910) . **I. L. R. 37 Calc. 856**

2. ——— **Pleading and proof**—*Variance between pleading and proof—Where plaintiff sues in ejectment on the ground of exclusive title, he cannot be given a decree for partition when the claim set up is found to be barred.* Where a plaintiff sues the defendant in ejectment on the ground that he and defendant were separately enjoying properties, he cannot, when such claim is found to be barred by limitation, rely on a tenancy-in-common not alleged in the plaint and claim a decree for partition. CHIDAMBARAM PILLAI *v.* MUTHU PILLAI (1909) **I. L. R. 33 Mad. 356**

POLICE OFFICER.

——— **statements made to—**

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS. 162, 288. **I. L. R. 34 Bom. 599**

POLICE REPORT.

See CRIMINAL PROCEEDINGS, INSTITUTION OF . . **I. L. R. 37 Calc. 49**

POSSESSION.

See OPIUM, ILLEGAL POSSESSION OF **I. L. R. 37 Calc. 24**

——— **confirmation of—**

See SURVEY ACT, SS. 41, 62. **14 C. W. N. 366**

——— **delivery of—**

See TRANSFER OF PROPERTY ACT, 1882, S. 54 . **I. L. R. 34 Bom. 139**

POST-NUPTIAL GIFTS.

See HINDU LAW—GIFT. **I. L. R. 37 Calc. 1**

POST OFFICE ACT (VI OF 1898).

——— **ss. 35, 64, 74**—*Rules framed under Act, infringement of, falls within s. 63—General power to frame rules conferred by s. 74, cl. (1) not confined to such rules as are contemplated by s 74, cl. 2.* Rules framed by the Governor-General in Council under s. 74, cl. (*1*) of the Post Office Act regarding the declaration in the case of articles sent by value-payable post form part of the Act under s. 74 (*3*), and infringement of such rules is punishable under s. 64. S. 35 also enables the

POST OFFICE ACT (VI OF 1898)—*concld.*

———— **ss. 35, 64, 74**—*concld.*

Governor-General in Council to make such rules. The general power to make rules conferred by s 74, cl. (*1*), is not confined to making such rules as are contemplated by cl. 2. THE CROWN PROSECUTOR *v.* KOTHANDARAMIAH (1910)
I. L. R. 33 Mad. 511

POUNDAGE.

———— **Sheriff's right to poundage.** The Sheriff is only entitled to poundage on sums levied: so where a seizure is wrongful and is withdrawn by direction of law, the Sheriff receives no poundage. *Mortimore* v *Cragg, 3 C P. D 216, In re Ludmore, 13 Q. B. D. 415,* and *In re Thomas, [1899] 1 Q B. 460,* followed BRIJRATAN *v.* JAYNARAIN (1910) . **I. L. R. 37 Calc. 649**

POWER-OF-ATTORNEY.

See REGISTRATION ACT (III OF 1877), S. 33 . . **I. L. R. 32 All. 179**

———— **Amendment of**—*Omission of name of mukhtiar in the power, by mistake—Amendment of mistake by Court by allowing fresh power to be filed —Inherent jurisdiction of Court to allow amendment of mistake—Effect of amendment as to limitation—Civil Procedure Code (Act V of 1908), ss. 36, 37—Rules and Circular Orders, Ch. XI, Art. 34.* Where there is no doubt as to the fact that the *mukhtiar* who filed an application for execution had in fact authority from the decree-holder to do so, and that his name was omitted by mistake from the power-of-attorney, the Court may, in its discretion, allow the power to be amended, upon proper application by the decree-holder for the insertion of the name of the attorney If such amendment is allowed, it takes effect from the date when the power-of-attorney was originally filed CHHAYEMANNESSA BIBI *v.* BASIRAR RAHMAN (1910)
I. L. R. 37 Calc. 399

PRACTICE.

See ADMINISTRATION SUIT.
I. L. R. 34 Bom. 420

See ADOPTION . **I. L. R. 37 Calc. 860**
I. L. R. 32 All. 104

See AFFIDAVIT . **I. L. R. 37 Calc. 259**

See DAUGHTERS . **I. L. R. 34 Bom. 510**

See HIGH COURT **I. L. R. 34 Bom. 378**

See HIGH COURT, ORIGINAL SIDE, JURISDICTION OF . **I. L. R. 37 Calc. 714**

See JURISDICTION . **I. L. R. 34 Bom. 13**

See LAND ACQUISITION ACT (I OF 1894)
I. L. R. 34 Bom. 486

See LIMITATION ACT (XV OF 1877), SS. 5 AND 7 . **I. L. R. 34 Bom. 589**

See MAHOMEDAN LAW—WAKF
I. L. R. 37 Calc. 870

See MORTGAGE . **I. L. R. 37 Calc. 907**

PRACTICE—*contd.*

See PROBATE . **I. L. R. 37 Calc. 224**

See PROVINCIAL INSOLVENCY ACT (III OF 1907), S 15 . **I. L. R. 32 All. 645**

See SOLICITOR'S LIEN FOR COSTS.
I. L. R. 34 Bom. 484

See WINDING UP PETITION.
I. L. R. 34 Bom. 533

1. ———— **Analogous appeals**—Two analogous appeals were preferred against the decisions of the Subordinate Judge and the District Judge respectively. In remanding the cases, the High Court directed both cases to be tried by the District Judge MAFIZUDDIN SARDAR *v* ASUTOSH CHUKERBUTTY (1910) . . **14 C. W. N. 352**

2. ———— **Arbitration**—*Order of Judge refusing to decide whether arbitrators are going beyond scope of their authority—Judgment—Appeal— Construction of submission to arbitration—Insurance against fire—Liability of Company for further loss—Letters Patent, 1865, cl 15.* The fact that a petition by nineteen different Companies was not signed by all the nineteen Companies, and that the appeal from the order of the Judge dismissing the petition was by but one of the nineteen Companies, and the other Companies were not parties to it, would have required serious consideration if the Court had to revoke the submission to arbitration but when the order which the Court passes is only an intimation to the arbitrators of its opinion on the question of their jurisdiction it is immaterial whether all or some of the Companies are formally parties to the proceedings in appeal As to the objection that even so far as the petition is by one Company, it is signed by one of its officers without any authorisation as required by law, the defect is a mere irregularity which can be cured, if necessary, by the Company putting in a power-of-attorney showing the authority given to a signatory ATLAS ASSURANCE COMPANY, LD *v* AHMEDBHOY HABIBBHOY (1908) . **I. L. R. 34 Bom. 1**

3. ———— **Compromise**—*Court—Inherent powers—Compromise assented to by pleader not specially authorised in that behalf—Decree in terms of compromise—Decree set aside* In the course of a suit, a compromise was presented which was signed by the defendants' pleader who was not specially authorised in that behalf The Court passed a decree in terms of the compromise. The defendant then applied to the Court to set aside the decree on the ground that he did not engage the pleader and that he had not authorised the pleader to compromise the suit. The Court set aside the decree and set down the suit for hearing. *Held,* that it is the inherent power of every Court to correct its own proceedings where it has been misled. *Held,* also, that, under the circumstances, the compromise was not binding upon the defendant and the decree passed upon it was void as to him. BASANGOWDA *v.* CHURCHIGIRIGOWDA (1910)
I. L. R. 34 Bom. 408

PRACTICE—*contd.*

4. ——— Decree, amendment of—*Decree not conformable to what the Court intended—Inherent power of Courts in India—Attachment, setting aside of—Sheriff's right to Poundage—Civil Procedure Code (Act V of 1908), s. 152.* The Courts in India have an inherent power to amend or vary decrees so as to bring them into accordance with the judgments, after they are signed by the Judges, even if they do not fall within s. 152 of the Civil Procedure Code (Act V of 1908). *In re Swire, 30 Ch. D. 239,* referred to. *Ainsworth* v. *Wilding, [1896] 1 Ch. 673,* distinguished. The Sheriff is only entitled to poundage on sums levied · so where a seizure is wrongful and is withdrawn by direction of law, the Sheriff receives no poundage. *Mortimore* v. *Cragg, 3 C. P. D. 216, In re Ludmore, 13 Q B. D. 415,* and *In re Thomas, [1899] 1 Q. B 460,* followed. BRIJRATAN *v* JAYNARAIN (1910)
I. L. R. 37 Calc. 649

5. ——— *Decree, modification of the terms of, after appeal—Jurisdiction—Appellate Court, powers of—Civil Procedure Code (Act V of 1908), s. 148* S. 148 of the Civil Procedure Code, 1908, cannot be taken to give any Court power to interfere with or modify its decree after there has been an appeal filed against the decree. The only Court that could, after an appeal had been preferred, modify the terms of the decrees, or extend the time fixed in the decree for its execution, or suspend the order made in the decree, would be the Appellate Court. PARMANAND DAS *v.* KRIPASINDHU ROY (1909)
I. L. R. 37 Calc. 548

6. ——— Plaint, amendment of—*Suit against defendant on ground which failed not to be decreed on another ground—Application for leave to amend plaint after arguments heard in appeal disallowed—Res judicata.* A suit brought against the defendants on one ground which fails should not be decreed against them on another ground which they had no opportunity of meeting. After arguments in appeal have been heard, the Court will not allow an amendment of the plaint so as to convert a suit of one character into a suit of a substantially different character *H* filed a suit in 1904 against *A* and *J*, the drawer and indorser respectively of two hundies. At the time of filing the suit *J* was dead. *H* obtained a decree against both defendants, which decree remained unsatisfied. In 1905 *H* filed a suit against the heirs of *J* on the same two hundies. *Held*, that the earlier suit having been filed against the firm of *J* and not against *J* personally, was a barr to the later suit. BAYABAI *v* HAJI NOOR MAHOMED (1908) . . . **I. L. R. 34 Bom. 244**

7. ——— Reference under Legal Practitioners' Act—*Jurisdiction—Legal Practitioners' Act (XVIII of 1879), ss. 13, 14—Division Bench, jurisdiction of, to hear reference under the Act from subordinate Courts.* According to a long and undeviating course of practice, which may be regarded as the law of the Court, a Division Bench appointed to dispose of the civil business arising out of a particular group, has power to hear and dispose of a reference, under s. 14 of the Legal Practitioners' Act, by the Presiding Officer of a Court within that Group ABINASH CHANDRA MOITRA, *In re* (1909) . **I. L. R. 37 Calc. 173**

8. ——— Same transaction—*Civil Procedure Code (Act V of 1908), o. I, r. 3, o II, r. 3—Grades of several defendants in one suit—"Same act or transaction"—"Series of acts or transactions."* In reading order I, rule 3, of the Civil Procedure Code (Act V of 1908) it seems quite obvious that the word "same" which precedes the words "acts or transaction" governs also the words "series of acts or transactions" and must be read before those words also. The first condition to be fulfilled before joining several persons as co-defendants in the same suit is that the right to relief sought in the suit must arise against all the defendants from the *same* act or transaction or from the *same* series of acts or transactions The second condition to be fulfilled under the rule is that some common question either of fact or law should arise against the defendants if separate suits were brought against such persons. Before a plaintiff can join several defendants in the same suit *both* the conditions laid down in the rule must be fulfilled, *first*, the relief sought against the defendants whether jointly, severally or in the alternative, must arise from the same act or transaction or the same series of acts or transactions And, *secondly*, there must arise between the plaintiff and all the defendants some common question of law or fact. The plaintiff may in one action unite several causes of action against several defendants provided that all such defendants are "jointly liable in respect of each and all of such causes of action" and that the con dition precedent to the plaintiff being allowed to join several causes of action against several defendants is that such defendants must all "have a joint interest in the main question raised by the litigation" and that causes of action joined in one suit against several defendants must be causes of action in which "the defendants are all jointly interested." It is not necessary that every defendant should be interested as to all the reliefs claimed in the suit but it is necessary that there must be a cause of action in which all the defendants are more or less interested although the relief asked against them may vary UMABAI *v.* BHAU BALWANT (1908)
I. L. R. 34 Bom. 358

9. ——— Third-party procedure—*Directions, refusal to give—Discretion.* The general principle on which a Court will issue third party directions is :—(i) that there must be a clear case of contribution or indemnity from the third party, (ii) that all the disputes arising out of a transaction as between the plaintiff and the defendant and between the defendant and a third party can be tried and settled in one suit, and (iii) that in cases of contract and sub-contract it must appear that the contract between the plaintiff and the defendant has been imported into the contract between the defendant and the third party. Under

the rules now in force, the third party cannot be cited so as to be bound by the trial of one particular question which is identical as between the plaintiff and the defendant and as between the defendant and the third party *Baxter* v *France* (*No 2*), [*1895*] *1 Q. B. 591*, followed. W & A GRAHAM & Co *v.* CHUNILAL HARILAL & Co (1909) **I. L. R. 34 Bom. 423**

10. ——— Vakil's right to appear before a Judge sitting on the Original Side of the High Court—*Application to file warrant of attorney—Extraordinary Civil Jurisdiction—Civil Procedure Code* (*Act XIV of 1882*), *s. 635—Civil Procedure Code* (*Act V of 1908*) *ss. 119, 129.* A vakil of the High Court applied before a Judge sitting on the Original Side of the Court, claiming a right to file a warrant of attorney in respect of a suit pending before the Midnapore District Court, in which a rule had been issued calling upon the plaintiffs to show cause why the suit should not be transferred to the High Court in its Extraordinary Original Civil Jurisdiction: *Held*, that having regard to the long-continued course of practice during which *vakils* never appeared on the hearing of such applications, the present application should be refused. *Held*, further, that the Civil Procedure Code of 1908 has nothing to do with a matter governed by old rules in force before 1909. *In re* A VAKIL'S APPLICATION (1910) . . . **I. L. R. 37 Calc. 853**

PRACTICE AND PROCEDURE.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS. 162, 288. **I. L. R. 34 Bom. 599**

PRE-EMPTION.

See COURT FEES ACT (VII OF 1870), S. 7, CLS. (v) AND (vi) **19**

——— **decree for—**

See CIVIL PROCEDURE CODE, 1882, S. 368. **I. L. R. 32 All. 301**

1. RIGHT OF PRE-EMPTION.

1. ——— Mortgage—*Pre-emption a right of substitution, not of re-purchase—Vendor not competent to mortgage property liable to pre-emption so as to bind pre-emptor.* The right of pre-emption being a right of substitution rather than a right of re-purchase, the vendee of property which is subject to a right of pre-emption cannot defeat the pre-emptive right by subsequently mortgaging the property and thus force the pre-emptor to take the property subject to a mortgage so created. *Gobind Dayal* v. *Inayatullah, I. L. R. 7 All. 775*, referred to. *Serh Mal* v *Hukam Singh, I. L. R. 20 All. 100, Narain* v. *Parbat Singh, I. L. R. 23 All. 247*, and *Deo Dat* v. *Ram Autar, I. L. R. 8 All. 502*, distinguished. KAMTA PRASAD *v.* MOHAN BHAGAT (1909) . . **I. L. R. 32 All. 45**

2. ——— Partition after sale but before decree—*Muhammadan law—Effect on suit.* The plaintiff sued for pre-emption of zamindari property, basing his claim upon the Muhammadan law and the fact that he was a co-sharer in the property sold. After the suit, but before decree, the property was partitioned and the plaintiff and the vendors became owners of different *mahals*. *Held*, that the plaintiff was no longer, after the partition had been completed, entitled to a decree for pre-emption. TAFAZZUL HUSAIN *v.* THAN SINGH (1910) . **I. L. R. 32 All. 567**

3. ——— Covenant in deed of partition—*Proper sale price, meaning of.* A right of pre-emption reserved in a partition deed is valid as between the co-owners themselves. The ekrarnamah contained the following clause :—Any one of the parties desirous of selling . . . . shall sell the same to the other party willing to buy the same at the proper sale price : *Held*, that the proper sale price would be the market value. KALIMUDDIN BHUYAN *v* REAZUDDIN AHMED (1909) **14 C. W. N. 295**

4. ——— Misjoinder—*Civil Procedure Code, 1882, ss. 44, 45—Two sales to same vendee—Suit in respect of both sales—Joinder of vendors as defendants.* Of the four owners of undivided shares in immoveable property three sold their interest in the property, and the fourth sold his interest separately at a later date to the same vendee. A pre-emptor sued for pre-emption on the basis of both these transactions, impleading as defendants the vendors and rival pre-emptor as well as the vendee. *Held*, that the suit was not bad for misjoinder of either causes of action or parties. *Bhagwati Prasad Gir* v. *Bindeshri Gir, I. L. R. 6 All. 106*, dissented from. *Kalaian Singh*, v. *Gur Dayal, I. L. R 4 All. 163*, referred to. *Held*, also, that the vendor is not a necessary party to a suit for pre-emption. *Hira Lal* v. *Ram Jas. I. L. R. 6 All. 57, Lok Singh* v. *Balwan Singh, All. W. N. (1903) 239*, and *Ram Sarup* v. *Sital Prasad, I. L. R. 26 All. 549*, referred to. HARBANS TIWARI *v.* TOTA SAHU (1909) **I. L. R. 32 All. 14**

5. ——— House of residence—*Family property—Division under an award—Prohibition of sale by a co-sharer of his portion to an outsider—Pre-emption—Construction—Court-sale—Prohibition not effective.* An award under which family property was divided among co-sharers provided that in case of a sale by any of the co-sharers of his portion of the house of residence he should sell it to his co-sharer for a certain sum and that he should not sell it to an outsider until the expiration of two months from the date of a notice in writing saying that they (co-sharers) were not willing to buy it. Subsequently a portion of the

PRE-EMPTION—*contd.*

1. RIGHT OF PRE-EMPTION—*contd.*

house belonging to one co-sharer having been sold in execution of a decree against him, it was purchased by an outsider. The sons of one of the other co-sharers, thereupon, having brought a suit for a declaration that the Court-sale was not binding upon them. *Held*, that the term of pre-emption in the award was contemplated to attach to sales made privately and willingly and not to attachment and sales *in invitum* the judgment-debtor. VITHAL NARAYAN *v.* MARUTI NARAYAN (1910) **I. L. R. 34 Bom. 567**

6. ——— Suit instituted after decrees passed in favour of other pre-emptors—*Plaintiff no party to former suits—Suit maintainable. Held*, that where a pre-emptor having a superior right of pre-emption brings his suit within limitation, the fact that decrees have been made in favour of other pre-emptors, the plaintiff not being a party to the suits in which such decrees were passed, will be no obstacle to the success of the suit *Abdur Razzak* v. *Mumtaz Husain, I. L. R. 25 All. 334*, distinguished. *Serh Mal* v *Hukam Singh, I L R 20 All 100, Allahadad Khan*, v. *Abdul Hakim, S. A No. 724 of 1906*, decided April 12th, 1907, and *Muhammad Latif* v. *Govind Singh, I. L R 5 All. 382*, referred to. RAJ NARAYAN RAI *v* DUNIA PANDE (1910) . . **I. L. R. 32 All. 340**

7. ——— Suit for pre-emption—*Act No. XVIII of 1876 (Oudh Laws Act), s. 9, cls. (1) and (2) and proviso as to drawing lots—Act No. XVII of 1876 (Oudh Land Revenue Act)—"Mahal" definition of—"Co-sharer in subdivision of tenure in which property in suit was comprised"—"Co-sharer in whole mahal"* At the summary settlement of Oudh the taluq in which the property in suit (three villages and two pattis or parts of villages) was comprised was settled with the father of the first respondent as taluqdar, but at the regular settlement in 1864 he came to a compromise with two other claimants by which he took half the taluq as superior proprietor, and the other half was assigned in equal shares to the other claimants, who were his relatives, in under proprietary right, they paying the Government revenue plus 10 per cent. to the taluqdar and being jointly liable to him in respect of the same as rent One of these two died childless and his share devolved upon the other one, and on the death of the latter both shares descended to the appellant (his son) and the second respondent (his grandson). Between these two in 1898 a partition took place under which the three villages and the two pattis were assigned to the second respondent, and a decree and mutation of names was made in accordance with the partition, but no separate engagement was made for payment of the Government revenue in respect of the property so assigned In 1902 the second respondent sold the property in question to the first respondent, who had succeeded his father as taluqdar. In a suit by the appellant against the respondents claiming the right of pre emption under s. 9 of the Oudh Laws Act (XVIII of 1876): *Held* (affirming the decision of the majority of the Court of the Judicial Commissioner), that the meaning attributed to the term "mahal" in the judgment of the officiating Judicial Commissioner (Mr Chamier), namely, "any parcel or parcels of land which have been separately assessed to, or are held under a separate engagement for, the revenue, and for which a separate record or rights has been prepared," was the proper meaning of the word in the Oudh Laws Act; and therefore, although the second respondent and the appellant may have been jointly liable to the first respondent for the Government revenue plus malikana as the rent of the villages and pattis assigned under the compromise of 1864, they were not at the date of the sale to the first respondent co-sharers in any sub-division of the tenure in which the property in suit was comprised (under cl. 1 of s 9), or the whole mahal (under cl 2 of that section) The Appellate Court in India found that the appellant and the first respondent had an equal right to pre-emption of the two pattis, and that under the proviso to s 9 they must draw lots to determine which of them should be entitled to exercise the right This being done the right to purchase fell to the first respondent, and the appellant consequently lost the right to pre-empt. SHEORAJ KUNWAR *v* HARIHAR BAKHSH SINGH (1910) . . . . **I. L. R. 32 All. 351**

PRE-EMPTION—*contd.*

1. RIGHT OF PRE-EMPTION—*concld.*

2. WAJIB-UL ARZ, CONSTRUCTION OF.

1. ——— *Pre-emption Wajib-ul-arz—Construction of document—Custom or contract.* The wajib-ul-arz of a village in the Saharanpur district contained the following declaration on the part of the co-sharers.—"Whereas a new settlement of our village from July 1860 to 1890, for a period of 30 years, has been made on a revenue of R484 annually, therefore the agreement of us proprietors and lambardars is that till the term of this settlement and in future till the completion of the next settlement we shall remain bound and carry out—," the reference intended being presumably to subsequent clauses of the document In a later wajib-ul-arz of 1295 Fash, the parties stated:—"In regard to the remaining customs of the village the wajib-ul-arz of 1267 Fash should be referred to." *Held*, that the wajib-ul-arz of 1267 Fash recorded a contract and not a custom, and that contract had expired with the settlement for which it was entered into. *Maratib Husain* v. *Alam Ali, All W N (1907) 285*, and *Budh Singh* v *Gopal Rai, I. L. R. 30 All. 544*, followed. ASA RAM *v.* KANHAIYA LAL (1910) **I. L. R. 32 All. 399**

2. ——— *Wajib-ul-arz—Custom or contract—Partition of village—Separate wajib-ul-arzes—Change in the language.* A village originally undivided was first partitioned into

PRE-EMPTION—*contd.*

2. WAJIB-UL ARZ, CONSTRUCTION OF—*contd.*

several mahals with a separate settlement wajib-ul-arz for each. Subsequently one of these mahals was subdivided into two and fresh wajib-ul-arzes were framed for these two mahals. One of these new mahals was in turn divided into two, but no fresh wajib-ul-arzes were then framed. The wajib-ul-arzes framed at the first and second partitions differed *inter se* as to their conditions relative to pre-emption. *Held*, that there was evidence only of a contract for pre-emption, which, so far as the two last formed mahals were concerned, had ceased to exist even before the expiry of the term of the settlement. PRAN SUKH *v* SALIG RAM (1910) . . . **I. L. R. 32 All. 261**

3. ——— *Wajib-ul-arz—Custom or contract—Construction of document* The wajib-ul-arz of an undivided village gave a right of pre-emption, first, to a near co-sharer (*hissadar karib*) and then to a co-sharer in the village (*hissadar deh*). Subseqeuently the village was divided by perfect partition. No new wajib-ul-arz was framed. Property situated in one of the new mahals was sold to a stranger, and a suit for pre-emption was brought by sharers in one of the other mahals, claiming as *hissadaran deh*. *Held, per* STANLEY, *C. J.*, that the plaintiff was entitled to pre-empt notwithstanding the partition, and that the words *hissadar deh*, as used in the wajib-ul-arz, meant a sharer in the village *Dalganjan Singh* v. *Kalka Singh, I. L. R. 22 All. 1*, distinguished. *Sahib Ali* v. *Fatima Bibi, I. L. R. 32 All. 63, Mithu Lal* v. *Muhammad Ahmad Said Khan, All. W. N. (1899) 19, Abdul Hai* v *Nain Singh, I. L. R. 20 All. 92, Matee Sah* v. *Mussamat Goklee, S. D. A., N.-W. P., Vol. I, 506, Gokul Singh* v *Minnu Lal, I. L. R. 7 All 772, Abbas Ali*, v. *Ghulam Nabi, All W. N (1891) 137, Mata Din* v. *Mahesh Prasad, All W. N. (1882) 100, Ram Din* v. *Pohkar Singh, I. L. R 27 All. 553, Auseri Lal* v. *Ram Bhajan Lal, I. L R. 27 All. 602*, and *Govind Ram* v. *Masih-ul-lah Khan, I. L. R. 29 All. 295*, referred to *Held*, per BANERJI, *J.*, that the plaintiff pre-emptor could not pre-empt after the partition of the village as, although he was a sharer in the village, he was not a co-sharer of the vendor, and that the words *hissadar deh* as used in the wajib-ul-arz meant a co-sharer of the undivided village for which the wajib-ul-arz had been prepared. *Dalganjan Singh* v. *Kalka Singh, I. L. R. 22 All. 1*, followed. *Janki* v. *Ram Partap, I. L. R. 28 All. 268*, and *Abdul Hai* v. *Nain Singh, I. L. R. 20 All. 92*, referred to. DORI *v.* JIWAN RAM (1910) . . **I. L. R. 32 All 265**

4. ——— *Wajib-ul-arz—Construction of document—Custom or contract.* The pre-emptive clause of a wajib-ul-arz ran as follows:—"*Aiyanda jari rakhna rawaj shafa ka ham ko manzur hai.*" *Held*, on a construction of the wajib-ul-arz, that it denoted a record of custom and not of contract. *Tasadduq Husain Khan* v. *Ali Husain Khan, All. W. N. (1908) 121*, distinguished. HAZARI LAL *v.* DURGA PRASAD (1909) . . . . **I. L. R. 32 All. 187**

PRE-EMPTION—*concld.*

2. WAJIB-UL-ARZ CONSTRUCTION OF—*concld*

5. ——— *Wajib-ul-arz—Interpretation—Perfect partition—No new wajib-ul-arz framed—"Malikan deh"* The determination of an alleged right of pre-emption must depend upon the particular circumstances of each case and the evidence adduced in support of the pre-emptive right. A village was divided by perfect partition into several mahals, but no new wajib-ul-arz was prepared The wajib-ul-arz framed before partition was headed "*Hakuk hissadaran bakhudha:* rights of co-sharers *inter se*" and give the right of pre-emption (i) to co-sharers in the *khata;* (ii) to the proprietors of the *patti*, and (iii) to the proprietors of the village (*malikan deh*). Plaintiff was a co-sharer in a different mahal from that in which the vendor was a co-sharer. *Held*, that the heading of the wajib-ul-arz limited the meaning of the expression "*malikan deh*" to proprietors who were co-sharers with a vendor, between whom and the vendor a common bond subsisted, and as the plaintiff was not a co-sharer in the same mahal with the vendor, she had no right of pre-emption *Janki* v. *Ram Partap Singh, I. L R 28 All. 286, Sardar Singh*, v. *Ijaz Husain Khan, I. L. R. 28 All. 614*, and *Govind Ram* v. *Masih-ullah Khan, I. L. R. 29 All 295*, distinguished. *Dalganjan Singh* v. *Kalka Singh, I. L R. 22 All 1*, followed. SAHIB ALI *v* FATIMA BIBI (1909) . **I. L. R. 32 All. 63**

PRELIMINARY DECREE.

See COURT FEES ACT VII OF 1870, SCH. II, CLS. 3, 4 . **I. L. R. 32 All. 517**

PRELIMINARY INQUIRY.

See "COURT," MEANING OF.
I. L. R. 37 Calc. 642

——— **by an Assistant Settlement Officer—**

See "JUDICIAL PROCEEDING."
I. L. R. 37 Calc. 52

PRESCRIPTION.

——— **Water-rights**—*Reservoir in another's land—Prescriptive right to take water by defined channels—Reservoir fed by surface water—Excavation by owner affecting supply of surface water, if actionable.* The defendants had by prescription acquired the right to take water for the irrigation of their lands by two defined channels issuing westward from an *ahar* or reservoir in plaintiffs' mouzah and fed by water coming to it by a defined channel from the north-west and surface water from the north, south and east: *Held*, that the plaintiffs had every right to cut in their own mouzah a *pyne* or channel which in no way interfered with the passage of water to the *ahar* through the channel from the north-west, although it might

PRESCRIPTION—*concld.*

result in drawing off the supply of surface water to the *ahar* to such an extent as would diminish the quantity of water available to the defendants for irrigating their lands INDERJIT PERTAP BAHADUR SAHI *v.* KRISHNA DOYAL GIR (1910) **14 C. W. N. 825**

PRESIDENCY SMALL CAUSE COURT.

——————— *Jurisdiction—Fraud*

Where a decree was passed by the Presidency Small Cause Court and a suit was instituted in the Court of a Munsif to set aside the decree on the ground of fraud: *Held*, that the jurisdiction to entertain such suits must be determined by the Civil Procedure Code, and the suit must be brought either in the Court within whose jurisdiction the fraud was perpetrated or within whose local jurisdiction the defendant ordinarily resides and personally works for gain *Nilmoney Barnick* v *Puddo Lochan Chakrabutty, 5 W. R., Act X, 50*, referred to *Held*, further, that the suit was maintainable in the Munsif's Court, and the jurisdiction of the Presidency Small Cause Court to vacate its own decree when the same has been obtained by fraud, is not sufficient to oust that of another Court to set aside the decree. *Sarthakram Marti* v. *Nundo Ram Marti, 11 C W. N. 579*, referred to. The plaintiff in such a suit must allege fraud by which he was prevented from placing his case before the original Court. He cannot bring a fresh action by merely alleging that the decree was obtained by the perjury of the person in whose favour it was given. *Mohamed Golab* v. *Mahomed Salliman, I. L. R. 21 Calc. 612*, referred to. ABDUL HUQ CHOWDHRY *v* ABDUL HAFEZ (1910) **14 C. W. N. 695**

PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882).

——————— **s. 31, cl. (*b*).**

See EXECUTION OF DECREE. **I. L. R. 37 Calc. 574**

——————— **ss. 37, 38.**

See CRIMINAL PROCEDURE CODE, S 195. **I. L. R. 34 Bom. 316**

——————— *Sanction to prosecute—Order granted by single Judge—Powers of Full Court to revoke the sanction—Full Court not an Appellate Court.* Where a sanction to prosecute has been granted by a Judge of the Presidency Small Causes Court at Bombay, a Full Court of that Court has no power to revoke the sanction. *Per* CHANDAVARKAR, *J*—The language used in ss. 37 and 38 of the Presidency Court of Small Causes Act (XV of 1882) does not appear to be appropriate for the purpose of conferring appellate jurisdiction upon the Full Court. *Per* BATCHELOR, *J.*—The jurisdiction conferred by s 38 of the Act is not appellate, but revisional only. SHIVLAL PADMA, *In re* (1909) **I. L. R. 34 Bom. 316**

——————— **s. 94.**

See FRAUD . . **14 C. W. N. 695**

PRESUMPTION.

See AGRA TENANCY ACT (II OF 1901), SS 74, 75 AND 76. **I. L. R. 32 All. 427**

See MAHOMEDAN LAW—MARRIAGE. **I. L. R. 32 All. 345**

See PENAL CODE (ACT XLV OF 1860), S. 76 . . **I. L. R. 32 All. 451**

——————— **of commission of offence.**

See OPIUM, ILLEGAL POSSESSION OF. **I. L. R. 37 Calc. 24**

PREVAILING RATE OF LAND.

See LANDLORD AND TENANT. **I. L. R. 37 Calc. 742**

PREVIOUS ACQUITTAL.

——————— **plea of—**

See ACQUITTAL **I. L. R. 37 Calc. 680**

PRICE OF GOODS SOLD.

——————— **suit for—**

See CONTRACT ACT. SS 39, 73, 120. **I. L. R. 34 Bom. 192**

PRIMOGENITURE.

See OUDH ESTATES ACT (I OF 1869), SS. 8 AND 22, SUB-S. (11). **I. L. R. 32 All. 599**

PRINCIPAL.

——————— **liability of—**

See PRINCIPAL AND AGENT. **14 C. W. N. 414**

PRINCIPAL AND AGENT.

See CIVIL PROCEDURE CODE, 1882, SS. 215A AND 216 . **I. L. R. 32 All. 525**

See JURISDICTION . **I. L. R. 34 Bom. 13**

1. AUTHORITY OF AGENT.

——————— *Limited authority of latter known to third party—"Holding out," principle of, if applies—Estoppel—Negligent or improper act of principal apparently investing the agent with extended authority, not proved—Misdirections.* A person who deals with an agent whose authority he knows to be limited does so at his peril, in this sense, that should the agent be found to have exceeded his authority the principal cannot be made responsible. In order that the principle of "holding out" should, in any given case of agency,

PRINCIPAL AND AGENT—*contd.*

1. AUTHORITY OF AGENT—*concld.*

apply to the act done by the agent and relied upon to bind the principal, must be an act of that particular class of acts, which the agent is held out as having a general authority on behalf of his principal to do But if the agent be held out as having a limited authority to do on behalf of his principal acts of a particular class, then the principal is not bound by an act done outside that authority, even though it be an act of that particular class, because the authority being thus represented to be so limited, the party prejudiced has notice, and should ascertain whether or not the act is authorised Where the principal did not by any negligent or improper act allow the agent to be apparently invested with an authority beyond or greater than the limited authority which the customer knew him to possess, there could not be any estoppel as against the principal in respect of any of the steps in a transaction whereby the customer was deceived by the agent acting beyond his authority THE RUSSO-CHINESE BANK *v.* LI YAU SAM (1909) **14 C. W. N. 381**

2. FRAUDULENT REPRESENTATIONS BY AGENT

——————— *Principal and Agent—Bribe or secret commission accepted by Agent after transaction completed—Contracts obtained by fraud voidable but not void—Limitation Act (XV of 1877), Sch. II, Art. 95.* The plaintiff instituted a suit against the defendants within three years from the date when the fraud as alleged in the suit became first known to him, though he had suspicions of the fraud prior to the three years The suit was for setting aside a lease which the plaintiff alleged he had been induced to grant to the defendant No. 1 under fraudulent representations made to the plaintiff by the defendant No. 2, who whilst purporting to act as the plaintiff's servant or agent, received, after the lease had been duly drawn up, executed and registered, the sum of R500 from the defendant No. 1 as a bribe or secret commission by way of payment for the services rendered to the latter in connection with the making of the arrangements for the execution of the lease :—*Held*, that mere suspicion is not knowledge, and the suit was not barred by limitation *Held*, further, that a bribe is nevertheless a bribe because its payment is postponed. When a bribe has been given, it is immaterial to inquire what, if any, effect the bribe had on the mind of the receiver and whether he was influenced thereby to recommend to the plaintiff an arrangement with the appellant which he would not otherwise have recommended. *Harrington* v. *Victoria Graving Dock Company, L. R. 3 Q. B. D. 549*, and *Shipway* v. *Broadwood*, [*1899*] *1 Q. B 369*, referred to *Held*, further, that a contract induced by fraud is only voidable, and the remedy by rescission is open only so long as the parties can be restored to the relative position which they originally occupied *Urquhart* v.

PRINCIPAL AND AGENT—*contd.*

2. FRAUDULENT REPRESENTATIONS BY AGENT—*concld*

Macpherson, L R 3 App. Cas. 831, followed. *Clough* v *London and North-Western Railway Company, L R 7 Ex 26*, referred to INDRA NATH BANERJEE *v* ROOKE (1909) **I. L. R. 37 Calc. 81**

3 LIABILITY OF AGENT

1. ——————— **Misconduct**—*Agent with irrevocable authority may be removed for misconduct—Suit, abatement of* In every contract of service there is an implied condition that if the services be not faithfully performed, the employer is entitled to put an end to the contract ; and an irrevocable contract of agency is no exception to this rule An agent appointed under an irrevocable contract of agency may be removed if he is guilty of misconduct in the performance of his duties. The above principle will apply whether the person employed be a servant or agent or a person occupying a fiduciary position A suit brought against such an agent for his removal and for recovering damages for his misconduct does not abate with the death of such agent MOYIL KOTTA KUNCHUNNI NAIR *v* SUBRAMANIAN PATTAR (1909) **I. L. R. 33 Mad. 162**

2. ——————— **Construction of Contract**—*Indian Contract Act (IX of 1872), ss 215-216—Agent appointed to sell goods buying them on his own account* S 216 of the Indian Contract Act is merely enabling and confers upon the principal the right to claim from his agent the benefit of the transaction to which the agency business related, where the agent, without the knowledge of the principal, has dealt with the business on his own account, instead of on account of the latter The principal is free to exercise that right or not. The law is that where a party elects to adopt a transaction, he must take its benefit with its burden. He cannot, as is said, "both approbate and reprobate" But both the benefit and the burden must, for that purpose, be attached to and incidents of the transaction which the principal has affirmed by election Where an agent appointed to sell his principal's goods for a fixed price buys them on his own account without the previous consent of the latter, it is competent for the principal either to repudiate the transaction under the circumstances mentioned in s 215 of the Contract Act or to affirm it. If he elects to affirm, the principal will be liable to pay to the agent such charges only as are incidents of the transaction of purchase, that is, such as the vendor under the contract would have been liable to pay to the purchaser, because what is affirmed is the relation of vendor and purchaser But if those charges are annexed by the terms of the contract to the agency, so as to regulate the relation of principal and agent as distinguished from the relation of vendor and purchaser, the agent is not entitled to recover them. *Solomons* v *Pender, 3 H. & C. 639*, and *Andrews* v. *Ramsay & Co.*, [1903] *2 K. B. 635*,

PRINCIPAL AND AGENT—*concld*

3. LIABILITY OF AGENT—*concld.*

referred to. JOACHINSON *v* MEGHJEE VALLABHDAS (1909) . . . **I. L. R. 34 Bom. 292**

4 LIABILITY OF PRINCIPAL.

——— *Contract Act (IX of 1872), s 233—Liability of principal and agent—Principal when may be sued—Negotiable Instruments Act (XXVI of 1881), ss 4, III (b) and 28—Negotiable instrument, what is not—Debt incurred on behalf of several co-sharers—If every one bound for every part of the debt—Apportionment if allowable according to the properties in respect of which debt incurred* Where an agent is personally liable for a debt the creditor has the option to proceed either against the principal or the agent Where it did not appear that in lending the money, the lender (who knew that the money was being borrowed on behalf of certain principals) looked exclusively to the agent for repayment. *Held,* that he could proceed to realise the money from the principals. *In the matter of the Ganges Steam Tug Co, Ld, I L R 18 Calc 31, 36; Paterson* v. *Gandasequi, 15 East. 62; Thomson* v *Davenport, 9 B & C. 78,* referred to As the authority to the agent contemplated a joint and reciprocal liability of all the principals *Held,* that the liability could not be distributed so as to hold each of the principals liable for his own apportioned share of the debt. Where an agent took loans upon notes of hand under letters of authority in order to pay the Government revenue in respect of certain properties and it was found as a fact that in one of these properties defendant No. 2 had no interest and that he had not given any power-of-attorney for raising loan to meet dues in respect of that property, but that the agent was authorised by defendant No 2 generally to raise money for the management of the state. *Held,* that the defendant No. 2 was liable for the entire debt SATYA PRIYA GHOSAL *v.* GOBINDA MOHUN ROY CHOWDHURY (1909) . . **14 C. W. N. 414**

PRIOR MORTGAGEE.

See MORTGAGE
14 C. W. N. 439; 675 note

——— **right of—**

See MORTGAGE . **I. L. R. 37 Calc. 282**

PRIOR AND SUBSEQUENT MORTGAGEE.

See CIVIL PROCEDURE CODE, 1882, ss. 13, 43 . . **I. L. R. 32 All. 119**

See TRANSFER OF PROPERTY ACT (IV OF 1882), s 74 . **I. L. R. 32 All. 138**

PRIORITY OF TITLE.

See TITLE . **I. L. R. 37 Calc. 239**

PRIVATE FERRY.

See FERRY . **I. L. R. 37 Calc. 543**

PRIVATE REFERENCE.

See ARBITRATION.
I. L. R. 37 Calc. 63

PRIVATE STREETS.

——— **drainage of—**

See CITY OF BOMBAY MUNICIPAL ACT (BOM. ACT III OF 1888), s 305.
I. L. R. 34 Bom. 593

PRIVILEGE.

See DEFAMATION **I. L. R. 33 Mad. 67**

See FALSE EVIDENCE
I. L. R. 37 Calc. 878

PRIVILEGED OCCASION.

See LIBEL . **I. L. R. 37 Calc. 760**

PRIVITY OF ESTATE.

See LESSOR AND LESSEE
I. L. R. 37 Calc. 683

PRIVY COUNCIL.

1. ——— **Leave to appeal**—*Application for leave to appeal—Appealable value—Decision indirectly involving amount.* Defendants who were co-sharers of the plaintiff in the zemindari having purchased certain holding from the tenants, the plaintiff sued them for their share of the rent due from one such holding, amounting to R230 The High Court reversing the decree of the lower Court dismissed the suit on the ground that as there was no contract of tenancy between the parties there was no relation of landlord and tenant between them The plaintiff in applying for leave to appeal to the Privy Council proved that there were other holdings similarly purchased by the defendants and that the decision of the High Court would have the effect of depriving him of rents of all such holding amounting to R800 a year, which capitalized came up to over R10,000. *Held,* that the decision indirectly involved a claim or question to or respecting property of the value of R10,000 or upwards and leave ought to be granted. SRINATH PAL CHOWDHURY *v* GIRINDRA CHANDRA PAL CHOWDHURY (1906) . . **14 C. W. N. 651**

2. ——— *Leave to appeal—Appealable value—Right of party to prove value of subject-matter contrary to valuation in plaint or memo of appeal—Mesne profits pending suit if to be added.* The valuation made in conformity with the stamp law does not prevent a party from obtaining leave to appeal by proving that the real value of the subject-matter does not fall short of the appealable amount But a defendant who had previously adopted the value given in the plaint for the purpose of an appeal preferred by him should not be allowed to contest that valuation on the principle that a party cannot both approbate and reprobate. In a suit for recovery of possession of immoveable property with mesne profits, the subject-matter to be valued would include mesne profits claimable from the institution of the suit to the date of the delivery of possession or until the

PRIVY COUNCIL—*concld.*

expiration of 3 years from the date of the decree with interest. BASANTA KUMAR ROY *v.* THE SECRETARY OF STATE FOR INDIA (1910) **14 C. W. N. 872**

3. ——— **Security bond**—*Privy Council appeal—Security bond, extension of time to file—Power of High Court—Sufficient reasons for delay—Computation of time—Date of decree, meaning of—Civil Procedure Code (Act V of 1908), o. 45, rule 7.* The High Court has power to extend the time for depositing costs in Court, but it ought not to do so without some cogent reasons. *Roy Jotindra Nath Chowdhry* v. *Roy Prasanna Kumar Banerjee, 11 C. W.N . 1104 ; Burjore* v *Bhagana, I. L. R 10 Calc. 557 ; Rangasami* v. *Mahalakshmamma, I L R. 14 Mad. 391,* followed. Where a petition for filing security bond out of time stated that the delay was caused by a misapprehension of the appellants about the date of re-opening of the High Court and that none of the appellants' men being present in Calcutta on that date, the bond was not filed : *Held,* that these were not reasons over which the applicant had no control and that the delay was not due to a mistake which could be regarded as not unreasonable or caused by negligence ; that they were therefore not cogent reasons such as to justify the extension of time HARENDRA LAL ROY CHOUDHRY *v.* SM. HARI DASI DEBI (1909) **14 C. W. N. 420**

PRIVY COUNCIL, PRACTICE OF

——— *Dismissal of appeal with costs—Alteration of decree appealed from in respondents' favour without cross-appeal by them.* In a suit on a promissory note for R16,042 principal, and interest at 1½ per cent. per mensem, and also for interest "on the decree from the date of the institution of the suit until realisation," the first Court passed a decree for only R500 "with interest as prayed." The Chief Court of Lower Burma ordered that "the decree of the Original Court be altered to a decree for the full amount claimed," and said nothing about interest. The plaintiffs (respondents) applied by petition to the Chief Court to amend its decree by adding a specific statement that "interest as prayed for in the plaint" was payable on the decretal amount, but the application was dismissed. The defendant appealed to the Privy Council, and shortly before the case came on for hearing, the respondents petitioned for special leave to enter a cross-appeal so far as the decree of the Chief Court had failed to include interest after the institution of the suit. A consent order in Council was made on 5th March 1910 that the respondents should have leave on the hearing to appeal on the question raised in their petition, and their Lordships, while dismissing the appeal, altered the decree of the Chief Court as prayed in the petition, without a cross-appeal being entered. CASSIM AHMED JEWA *v.* NARAINAN CHETTY (1910) **I. L. R. 37 Calc. 623**

PROBATE.

See EXECUTOR . **14 C. W. N. 256**

PROBATE—*contd.*

See HINDU WILLS ACT (XXI OF 1870), SS. 2 AND 5 . **I. L. R. 34 Bom. 506**

See LIMITATION ACT (XV OF 1877), SS. 5 AND 7 **I. L. R. 34 Bom. 589**

See MAHOMEDAN LAW—PROBATE. **I. L. R. 37 Calc. 839**

See PROBATE AND ADMINISTRATION ACT, S. 81 . . **I. L. R. 34 Bom. 459**

——— **dismissal of application, for default—**

See WILL . . **14 C. W. N. 924**

1. ——— **Jurisdiction of High Court**—*Letters of Administration—High Court and District Court, jurisdiction of—Concurrent jurisdiction—Probate and Administration Act (V of 1881), ss. 2, 51, 56, 87—"High Court," meaning of, in s 87—Practice—Rule 740 of the High Court Rules and Orders.* The High Court has jurisdiction to grant probate and letters of administration, on the Original Side, in any case which could have been brought before any District Judge in either of the two Provinces of Bengal. "High Court" mentioned in s. 87 of the Probate and Administration Act (V of 1881) is not merely confined to the Appellate Jurisdiction of the Court, but it includes its Original Jurisdiction. *In the goods of Mohendra Narain Roy, 5 C. W. N. 377,* referred to. S. 87 of the Probate and Administration Act does not require that any portion of the property should be within the limits of the Original Jurisdiction of the High Court ; and Rule 740 of the High Court cannot override the express provisions of this section giving the High Court concurrent jurisdiction with the District Court. NAGENDRABALA DEBI *v.* KASHIPATI CHOWDHRY (1909) **I. L. R. 37 Calc. 224**

2. ——— *Testamentary and Intestate Jurisdiction of High Court—Revocation—Probate and Administration Act (VI of 1881), s. 50—Official Trustee of Bengal—Official Trustee's Act (XVII of 1864).* Where a Judge exercising the original testamentary and intestate jurisdiction of the High Court granted probate to the Official Trustee of Bengal, the probate being expressed to be granted to the Official Trustee of Bengal for the time being, assuming the order to have been erroneous, it cannot be said that the Judge acted without jurisdiction so as to bring the matter within the scope of s. 50 of the Probate and Administration Act. OFFICIAL TRUSTEE OF BENGAL *v.* KUMUDINI DASI (1910) **I. L. R. 37 Calc. 387**

3. ——— **Grant of probate on compromise, if may be revoked**—*Persons not parties but cognisant of grant if bound—Infants, if bound—Acquiescence—Delegation of powers by District Judge to District Delegate—Probate and Administration Act (V of 1881), s. 52.* Proceedings in a Court of probate are proceedings *quasi in rem,* and a probate granted in solemn form is binding not only on the parties who have appeared

PROBATE—*concld.*

or have been formally cited but also on privies, *i.e.*, persons who being cognisant of the proceedings and having an opportunity to intervene have chosen not to do so. *Newell* v. *Weeks*, *2 Phillim 224*; *Wytcherley* v. *Andrews*, *L. R 2 P. & D. 327*; *Young* v. *Holloway*, [*1895*] *P. 87*, relied on It may be taken as settled law that in a contentious proceeding probate may be granted in common form in consequence of a compromise between the disputants resulting in the withdrawal of opposition and that it cannot afterwards be revoked except on proof of fraud or circumvention practised either upon the Court or upon the parties *Necol* v. *Askew*, *2 Moo P C. C. 88*, followed. When a probate is granted in common form by reason of a compromise between the parties, the terms of the compromise cannot be embodied in the order, for the reason that a Court of Probate cannot in many instances enforce the terms. *Evans* v. *Saunders*, *30 L J. P. M. & A. 184*; *Roadnight* v. *Carter*, *3 Sw. & Tr 44*; *Carritt* v. *Christian*, *L. R. 2 P & D. 181*, referred to. But they may be enforced by an action if otherwise unobjectionable. But though a probate obtained in common form as the result of a compromise is binding upon the parties to the compromise it is not binding upon those who are not parties to it, even though they have been cognisant of the former proceedings. *Wytcherley* v. *Andrews*, *L. R. 2 P. & D. 327*, referred to. When the terms of the compromise are agreed to by the parties who are *sui juris*, the Court of probate will not make an order binding infants to the terms of the compromise. *Norman* v. *Strains*, *L R 6 P. D. 219*, referred to. But though an infant has a right in such cases to apply after he comes of age for revocation of probate obtained by consent yet he may be barred by acquiescence and delay for a long time or by the subsequent ratification of the dispositions of the will from putting the executor to the proof of the will in solemn form, or from contesting its genuineness. *Hoffman* v. *Norris*, *2 Phillim 230 note*; *Mohan* v. *Broughton*, [*1900*] *P. 56*, relied on. Where the caveators having by reason of a compromise, withdrawn their opposition, the District Judge sent the case to the District Delegate for enquiry and report: *Held*, that the District Judge had acted within the powers conferred on him by s. 52 of the Probate and Administration Act. KUNJA LAL CHOWDHRY *v.* KAILASH CHANDRA CHOWDHRY (1910) . . **14 C. W. N. 1068**

PROBATE AND ADMINISTRATION ACT (V OF 1881).

See RECEIVER . **I. L. R. 37 Calc. 754**

——— **ss. 2, 51, 56, 87.**

See PROBATE . **I. L. R. 37 Calc. 224**

——— **s. 4.**

See MAHOMEDAN LAW—PROBATE.
I. L. R. 37 Calc. 839

PROBATE AND ADMINISTRATION ACT (V OF 1881)—*concld.*

——— **ss. 26, 64.**

See LETTERS OF ADMINISTRATION.
14 C. W. N. 463

——— **s. 50.**

See PROBATE . **I. L. R. 37 Calc. 387**

——— **ss. 50, 69**—*Letters of Administration to the estate of Hindu widow—Locus standi to apply for revocation of person denying property left to be testatrix's stridhan.* When letters of administration were granted in respect of the will of a Hindu widow purporting to convey her *stridhan* property, a petitioner for revocation who had no interest in the estate of the deceased but who on the other hand alleged that she had no *stridhan* property but that what property she had belonged to the joint family of which she was a member, was not competent to make the application, not being "a person having an interest in the estate of the deceased" within s. 69 of the Probate and Administration Act ABHIRAM DAS *v.* GOPAL DAS *I. L. R. 17 Calc. 48*, followed SRIGOBIND PERSHAD *v.* LALJHARI KOER (1909) . **14 C. W. N. 119**

——— **s. 52.**

See PROBATE . **14 C. W. N. 1068**

——— **s. 81.**

See CAVEATOR . **I. L. R. 34 Bom. 459**

See PROBATE . **I. L. R. 34 Bom. 459**

See SUCCESSION ACT, s 250.
I. L. R. 34 Bom. 459

——— *Indian Succession Act (X of 1865), s. 250—Will—Probate—Caveator—Interest possessed by the caveator.* The provisions of s 81 of the Probate and Administration Act, 1881 (which correspond with those of s. 250 of the Indian Succession Act, 1865), enact that the interest which entitles a person to put in a caveat must be an interest in the estate of the deceased person, that is, there should be no dispute whatever as to the title of the deceased to the estate, but that the person who wishes to come in as the caveator must show some interest in the estate derived from the deceased by inheritance or otherwise. *Abhiram Dass* v. *Gopal Dass*, *I. L. R. 17 Calc. 48*, followed. PIROJSHAH BHIKAJI *v.* PESTONJI MERWANJI (1910)
I. L. R. 34 Bom. 459

——— **s. 83.**

See WILL . . **14 C. W. N. 924**

——— **s. 90.**

See COMPROMISE . **14 C. W. N. 451**

PROCEDURE.

See CRIMINAL PROCEDURE CODE, SS. 157, 159, 476 . . **I. L. R. 32 All. 30**

See MINOR . **I. L. R. 32 All. 287**

See PENAL CODE, s. 494.
I. L. R. 32 All. 78

PROCEDURE—*concld.*

See SANCTION FOR PROSECUTION.
I. L. R. 37 Calc 714
14 C W. N. 806

PROCESSION.

See PUBLIC ROAD, RIGHT TO USE.
I. L. R. 34 Bom. 571

PROCLAMATION.

See MORTGAGE . I. L. R. 37 Calc. 897

PROFITS.

——— derived from joint family property—

See HINDU LAW—JOINT FAMILY.
14 C. W. N. 221

——— suit for—

See ADVERSE POSSESSION
I. L. R. 32 All. 389

PROMISSORY NOTE.

See HINDU LAW—MINOR
I. L. R. 34 Bom. 72

PROSECUTION.

——— for instituting a false case—

See JURISDICTION OF CRIMINAL COURT
I. L. R. 37 Calc. 250

——— *Prosecution—Calcutta Municipal Act (Beng. III of 1899), ss. 559 (18), 561 (b), 631—Non-compliance with notice to remove encroachment on public street—Institution of prosecution more than three months after expiry of notice—Limitation—Continuing offence—Bye-laws, validity of—Ultra vires.* A prosecution for failure to comply with a notice by the Chairman to remove an obstruction on a public street, instituted more than three months after the expiry of the date fixed therein, is barred under s 631 of the Calcutta Municipal Act. A bye-law must conform to the provisions of the law under which it purports to be made Rule (1) of the bye-laws framed under s. 559 (*18*) of the Act is *ultra vires*, in so far as it creates a continuing breach after notice in violation of the terms of s. 561 (*b*). NARAIN CHANDRA CHATTERJEE *v.* CORPORATION OF CALCUTTA (1909)
I. L. R. 37 Calc. 545

PROSECUTION WITNESSES.

——— cross-examination of—

See CROSS-EXAMINATION.
I. L. R. 37 Calc. 236

PROVINCIAL INSOLVENCY ACT (III OF 1907).

——— s. 15—*Insolvency—Grounds for dismissing petition.* Under the Provincial Insolvency Act, 1907, transfer of property by the debtor with intent to defraud his creditors or reckless contracting of debts or giving unfair preference to any of his creditors or committing any other act of bad faith are grounds for refusing an absolute order of discharge but not grounds for refusing to make an order of adjudication Where, therefore, a petitioner for a declaration of insolvency feigned ignorance about the existence of his account books and prevaricated about other matters: *Held*, that his petition could not be dismissed ont hese grounds, the object of the Legislature, by enacting the Insolvency Act, being to make it easier to obtain an order of adjudication *Ex parte King; Re Davies, L. R. 3 Ch. D 461, Ex parte Griffin; Re Adams, L. R 12 Ch. D 480*, and *Ex parte Tynte, L. R 15 Ch D. 125*, referred to GIRWARDHARI *v.* JAI NARAIN (1910) . . I. L. R. 32 All. 645

PROVINCIAL INSOLVENCY ACT (III OF 1907)—*concld.*

——— s. 15—*concld.*

——— s 43 (*2*)—*Insolvency—Inquiry as to alleged fraudulent acts committed by debtor—Procedure—Evidence. Held*, that proceedings under s. 43 (*2*) of the Provincial Insolvency Act, 1907, should not be based merely upon the evidence given on behalf of the creditors when opposing the debtor's application to be adjudged an insolvent, but evidence as to the specific acts alleged against the debtor should be recorded *de novo In the matter of Rash Bihari Roy, I L R. 17 Calc 209*, referred to. NATHU MAL *v* THE DISTRICT JUDGE OF BENARES (1910) . . I. L. R. 32 All. 547

PROVINCIAL SMALL CAUSES COURTS ACT (IX OF 1887).

——— Sch. II, Art. 32.

See REDEMPTION, SUIT FOR.
14 C. W. N. 1001

——— ss. 16, 27, 32, Sch. II, cls. (*2*) and (*3*)—*Suit for the recovery of certain sum representing a share in the produce of immoveable property—Cognizance by the Court of Small Causes—Decree final—Appeal—Jurisdiction by consent of parties* A suit for the recovery of R12-11-6 representing plaintiff's share in the produce of immoveable property is a suit for money had and received to the plaintiff's use, and is cognizable by the Court of Small Causes and the decree in such a suit is final under s 27 of the Provincial Small Causes Courts Act (IX of 1887). Notwithstanding its finality an appeal was preferred to the District Court of Ahmedabad, which Court entertained the appeal and reversing the decree allowed the plaintiff's claim. The defendant, thereupon, preferred a second appeal and at the hearing prayed that the second appeal might be treated as an application for revision under s. 115 of the Civil Procedure Code (Act V of 1908), on the ground that the District Court acted without jurisdiction in entertaining the appeal. The respondent (plaintiff) urged that a second appeal lay: and further that by reason of the conduct of the parties and the fact that the appellant (defendant) had not objected to the jurisdiction of the District Court, it was too late in second appeal to take the point. *Held*, that the District Court had no jurisdiction to try the case and the conduct of the parties could not give it jurisdiction.

PROVINCIAL SMALL CAUSES COURTS ACT (IX OF 1887)—*concld.*

——— **ss. 16, 27, 32**—*concld.*

Ledgard v. *Bull, L. R. 13 I. A. 134,* and *Meenakshi Naidoo* v. *Subramanya Sastri, L R. 14 I. A. 160,* referred to. Decree of the District Court reversed and that of the first Court restored. DAVLATSINHJI (MAHARANA SHRI) *v.* KHACHAR HAMIR MON (1909) . **I. L. R. 34 Bom. 171**

——— **Sch. II, Art. 18**—*Suits 'relating to Trust,' what are* Suit by a company by its President to recover from defendants Nos 2 to 4 the subscriptions due under the Articles of Association of the Company. The first defendant was a trust; defendants Nos 2 to 4 were the trustees of the trust and members of the plaintiff company, in their capacity of trustees. The plaint prayed that the moneys due may be recovered from the trust property in the first instance and if not so recoverable from the defendants Nos 2 to 4 personally. The suit was instituted on the Small Cause side, and the Subordinate Judge returned the plaints on the ground that the suit was one relating to a trust within the meaning of Act 18 of Sch. II of the Provincial Small Cause Courts Act and was not triable on the Small Cause side. The High Court was moved by petition under s 25 of the Act: *Held, per* WHITE, *C J*, and SANKARAN NAIR, *J.* (BENSON, *J*, dissenting), the suit was to enforce payment of moneys due under the Articles of Association and not one 'relating to a trust' within the meaning of Art. 18 The fact that issues relating to the trust and the rights and liabilities of the trustees may have to be tried will not make the suit one 'relating to a trust.' SRI VENKATACHALLAPATHY SAHAYA VIYAVASAYA COMPANY *v* KANAGASABHAPATHIA PILLAI (1910) **I. L. R. 33 Mad. 494**

PUBLIC CHARITIES.

——— **Suit respecting public charities** —*Civil Procedure Code (Act V of 1908), ss 92, 115—Suit with Advocate-General's sanction in respect of public charities—Court-fee—Court Fees Act (VII of 1870), Sch II, Art 17 (vi)—Striking off a prayer for relief—Advocate-General's sanction if necessary—Interlocutory order—Revision by High Court* A plaint in a suit under s 92 of the Civil Procedure Code (relating to public charities) should bear a Court-fee stamp of R10 only as required by Art. 17, cl. (vi) of Sch. II of the Court Fees Act *Thakuri* v. *Brahma Narain, I. L. R. 19 All. 60; Giridhari Lal* v. *Ram Lal, I. L. R. 21 All. 200,* relied on Where the plaintiffs in such a suit being ordered by the Judge to value the suit and pay *ad valorem* Court-fee on such value moved the High Court without waiting for the dismissal of the suit for non-compliance with the order: *Held,* that the order in effect amounted to a denial of jurisdiction, and though interlocutory was a fit one for interference in revision by the High Court. A prayer for relief in a plaint in such a suit not covered by those specified in s. 92 may be struck off on the application of the

PUBLIC CHARITIES—*concld.*

plaintiff, the sanction of the Advocate-General for striking off such a prayer being unnecessary. *Badree Das* v *Chooni Lal, I L. R. 32 Calc 789,* referred to. RAMRUP DAS *v.* MOHUNT SHIVARAM DAS (1910) . . . **14 C. W. N. 932**

PUBLIC DEMANDS RECOVERY ACT (BENG. I OF 1895).

——— *Suit for recovery of possession on declaration that certificate sale void ab initio—Secretary of State if necessary party.* Where a plaintiff sues to recover possession of property sold under the Public Demands Recovery Act on the ground that the certificate and sale under it had in no way affected his rights, being *ab initio* null and void, and does not seek to set aside the sale, he is not bound to make the Secretary of State a party to the suit. *Gobinda Chandra* v. *Hemanta Kumari, I L R. 31 Calc. 159 S C. W. N. 657,* distinguished. RAGHURAJ SINGH *v.* MAHARAJ LAL (1910) . . . **14 C. W. N. 606**

——— **s. 10**—*Public Demands Recovery Act (Beng I of 1895), ss. 10, 15, 17—Arrears of road-cess—Payment—Appropriation—Contract Act (IX of 1872), ss 59, 60—Certificate and sale when no arrears, if valid—Regular suit to set aside, if lies—Limitation—Special limitation not applicable* A debt under the Public Demands Recovery Act is nothing but a debt, and the law laid down in ss 59 and 60 of the Contract Act which is nothing more than a codified statement of the general law as to the appropriation of payments made by the debtor is applicable to payments made on account of arrears of road-cess in the Collectorate. *Ganga Bishun Singh* v *Mahomad Ian, I. L R 33 Calc. 1193 s c 10 C. W. N 948; Jogendra Mohan Sen* v *Uma Nath Guha, I. L R 35 Calc. 636 s.c. 12 C. W. N 646,* referred to. The Collector therefore has not authority to appropriate payments made in liquidation of specific arrears of road-cess towards previous arrears; and a certificate issued under the Public Demands Recovery Act in respect of the later arrears so paid off, is not a valid certificate under the Act A sale held in pursuance of such a certificate is without jurisdiction, the foundation for the exercise of jurisdiction by the Revenue authority being wanting in such a case. When the arrears in respect of which the certificate purports to have been issued did not exist, a suit to set aside the sale held in execution of the certificate lies under the ordinary law; s. 15 of the Act and the special limitation provided therein for suits to modify or cancel a certificate not applying to such a suit *Janukdhari Lal* v. *Gossain Lal Bhaya, 13 C. W. N 710,* followed NANDAN MISSIR *v.* LALA HARAKH NARAIN (1910) **14 C. W. N. 607**

——— **ss. 12, 15, 17, 24, 26.**

See CERTIFICATE OF SALE.
I. L. R. 37 Calc. 107

PUBLIC FERRY.

——— **declaration of limits of—**

See FERRY . **I. L. R. 37 Calc. 543**

PUBLIC OFFICER.

See CANTONMENTS ACT (XVIII OF 1889), S 80 . . **I. L. R. 34 Bom. 583**

PUBLIC ROAD.

——— **Right of marching in procession with a car**—*Suit for declaration of right—Injunction restraining interference with the right.* Plaintiffs sued on behalf of themselves and of other members of a religious community to have a declaration of their right of marching in procession with a car along a particular public road to certain temples and for an injunction restraining the defendants from interfering with the plaintiffs. The defendants contended that the plaintiffs had no right to march along the road The lower Courts dismissed the suit on the ground that the road being public the plaintiffs could not sue unless special damage was shown and proved. On second appeal by the plaintiffs: *Held*, reversing the decree and allowing the claim, that the suit was not for removal of a public nuisance but for a declaration of the right of an individual community to use the public road. Every member of the public and every sect has a right to use the public streets in a lawful manner and it lies on those who would restrain him or it to show some law or custom, having the force of law abrogating the privilege. *Sadgopachariar* v. *A Rama Rao, I L. R 26 Mad 376*, followed. BASLINGAPPA PARAPPA *v.* DHARMAPPA BASAPPA (1910) . **I. L. R. 34 Bom. 571**

PUISNE MORTGAGE.

See MORTGAGE . **I. L. R. 37 Calc. 282**

PUJARI.

——— **dispute concerning to act as—**

See CRIMINAL PROCEDURE CODE (V OF 1898), S. 147 . **I. L. R. 37 Calc. 578**

PUNJAB LAWS ACT (IV OF 1872).

——— **s. 27.**

See INSOLVENCY **I. L. R. 37 Calc. 418**

PURCHASE-MONEY.

——— **refund of—**

See SALE IN EXECUTION OF DECREE. **I. L. R. 37 Calc. 67**

PURCHASER.

——— **of equity of redemption—**

See MORTGAGE . **14 C. W. N. 576**

PURDANASHIN LADY.

See ATTESTATION **I. L. R. 37 Calc. 526**

See ISRI PROSAD *v.* GUNGA PROSAD SINGH . . **14 C. W. N. 165**

PUTNI.

See PUTNI LEASE.

See PUTNI TENURE.

See TRANSFER OF PROPERTY ACT, S 73. **14 C. W. N. 186**

PUTNI—*concld.*

——— *Putni Regulation (Reg. VIII of 1819), s. 9—Agreement of putnidar with stranger for purchase by latter and reconveyance to former—Legality—Contract Act (IX of 1872), s. 23.* A contract entered into by a *putnidar* with a stranger stipulating that the latter would purchase the *putni* which had been advertised for sale under Reg. VIII of 1819, and reconvey it to the *putnidar* receiving the amount of the purchase-money with interest and a further sum in addition from him, is invalid under the provisions of s. 23 of the Contract Act, as being in contravention of the provisions of s 9 of the Putni Regulation, MOHAN LAL BABU *v.* UDAI NARAIN BHADURI (1910) **14 C. W. N. 1031**

PUTNIDAR.

See CHAUKIDARI CHAKRAN LAND. **14 C. W. N. 995**

PUTNI LEASE.

——— *Construction of—Covenant in contravention of the rule against perpetuities—Contingent covenant in a lease, when operative.* Where a lessor by a *putni pattah* after leasing a mouzah exempted from its operation certain lands and covenanted that on certain contingencies happening the lessee should acquire a right thereto as *putnidar* but no time was specified within which the contingency was to happen in order to vest the right in the *putnidar*: *Held*, that such covenant was void as offending against the rule against perpetuities even as between the parties to the covenant. *Chandi Churn Barua* v. *Sidheswari Debi, I. L. R 16 Calc. 71; Ramasami Pattar* v. *Chinan Asari, I. L R. 24 Mad 449*, and *Nabin Chandra Soot* v. *Nabab Ali Sarkar, 5 C. W. N 343*, referred to. ANATH NATH MAITRA *v.* KUMAR KESHAB CHANDRA ROY (1910) **14 C. W. N. 601**

PUTNI REGULATION (VIII OF 1819).

——— **s. 11.**

See INCUMBRANCE **I. L. R. 37 Calc. 322**

——— **s. 17, cl. (c).**

See PUTNI TENURE. **I. L. R. 37 Calc. 747**

PUTNI SALE.

——— **suit to set aside—**

See LIMITATION ACT, 1877, S. 8. **14 C. W. N. 128**

PUTNI TENURE.

1. ——— *Incumbrance—Customary right to cut and appropriate trees, whether an incumbrance—Putni Regulation (VIII of 1819), s. 11—Right of an auction-purchaser at a sale held under the Putni Regulation to avoid such incumbrance—Bonâ fide engagement made by the defaulting proprietor with resident and hereditary cultivators, effect of.* A customary right to cut and appropriate trees is an incumbrance within the meaning of s. 11 of Regulation VIII

PUTNI TENURE—*concld.*

of 1819. A purchaser of a *putni taluq* at a sale held under Regulation VIII of 1819 is not entitled to hold the property free from a customary right or a right recognised by usage which has grown up during the subsistence of the *putni*, and under which occupancy raiyats are entitled to appropriate and convert to their own use such trees as they have the right to cut down, inasmuch as he is not entitled to cancel a *bonâ fide* engagement made by the defaulting proprietor with the resident and hereditary cultivators PRADYOTE KUMAR TAGORE *v* GOPI KRISHNA MANDAL (1910) **I. L. R. 37 Calc. 322**

2. ——— *Putni Regulation (VIII of 1819), s. 17, cl. (c)—Arrears of rent—Arrears previous to the current year for which the sale took place—Personal Debt—Bengal Tenancy Act (VIII of 1885), s. 65—First Charge* Under the Putni Regulation, VIII of 1819, s. 17, cl (*c*), where the arrears of rent claimed are for balances due for periods prior to the current year for which the arrears are due when the sale is held in the middle of the year, or prior to the year preceding if the sale be held at the commencement of the following year, these balances must be treated as personal debts recoverable under the ordinary procedure for recovery of debts, and not as rents recoverable under the provisions of the Tenancy law, and that in such a case the provisions of s. 65 of the Bengal Tenancy Act would not have any application. *Peary Mohan Mukhopadhya* v. *Sreeram Chandra Bose, 6 C. W. N. 794*, commented on and distinguished. JAGANNATH *v* MOHIUDDIN MIRZA (1910) . . . **I. L. R. 37 Calc. 747**

R

RAILWAY COMPANY.

See CARRIER, LIABILITY OF
I. L. R. 33 Mad. 120

See CONTRIBUTORY NEGLIGENCE.
I. L. R. 34 Bom. 427

RAILWAYS ACT (IX OF 1890).

——— s. **7**—*City of Bombay Municipal Act (Bom Act III of 1888), s. 394—Use by Railway Company of its premises for storing timber—License from the Municipal Commissioner for the use, not necessary.* The Agent of the G. I. P Railway Company having been charged in the Presidency Magistrate's Court at the instance of the Bombay Municipality under s. 394 (*1*) (*d*) of the City of Bombay Municipal Act (Bom. Act III of 1888) with having used the Company's premises for storing timber without a license granted by the Municipal Commissioner, the Presidency Magistrate recorded evidence and referred the following question under s. 432 of the Criminal Procedure Code (Act V of 1898):—"Do the statutory powers given to the Railway Company (s. 7 of the Indian Railways Act, IX of 1890) preclude the necessity of obtaining a license from the Municipal Commissioner, to use premises in such a manner as is necessary for the convenient making, altering, repairing and using the Railway?" *Held*, that no such license was necessary. S. 7 (*1*) of the Indian Railways Act (IX of 1890) authorizes the Railway Administration to do all acts necessary for the convenient making, maintaining, altering, repairing and using the Railway notwithstanding anything in any other enactment for the time being in force. The storing of timber was necessary for the convenient making, etc., of the Railway line. Under s. 7, sub-s. 2 of the Indian Railways Act (IX of 1890) the Governor General in Council and not the Municipal Commissioner has the control of the Railway Administration in the exercise of its powers under sub-s. 1 MUNICIPAL COMMISSIONER OF BOMBAY *v* G. I. P. RAILWAY COMPANY (1909)
I. L. R. 34 Bom. 252

——— s. **140**—*Notice of claim sent through post but not registered—Post Office Act (XIV of 1866), Part III.* Notice of a claim of damages for short delivery sent through the post but not registered under Part III of the Indian Post Offices Act was not service in any of the modes provided by s. 140 of the Railways Act. *Nadir Chand* v. *Wood, I. L. R. 35 Calc. 194 : s.c. 12 C. W. N. 450*, relied on. MARTIN & Co. *v.* FAKIR CHAND SAHU (1910) . **14 C. W. N. 888**

RATEABLE DISTRIBUTION.

See CIVIL PROCEDURE CODE, 1882, SS. 285, 295 . . **14 C. W. N. 396**

RE-ASSESSMENT OF PREMISES.

See ACQUIESCENCE.
I. L. R. 37 Calc. 833

RECEIPT, ACKNOWLEDGMENT OF.

——— *Stamp-Duty—Money received by servant of a firm and handed over to fellow-servant—Consideration—Acknowledgment of receipt by fellow-servant of a sum larger than R20 if liable to stamp-duty—Stamp Act (II of 1899), s. 2 (23), Sch. I, Art. 53.* Where a sum exceeding R20 was received by an assistant in a mercantile firm from the cashier of the firm as advance made on the firm's behalf, and to be expended on the firm's behalf, and previous to disbursement of the sum in question a pay-order was made out by the Accounts Department of the firm and was sent to the cashier who had paid the sum to the assistant, and the assistant at the same time acknowledged receipt by signing his name or initials on the pay-order: *Held*, that the acknowledgment did not require a receipt-stamp by reason of the assistant's signature on the pay-order. *Attorney-General* v. *Carlton Bank*, [*1899*] *2 Q. B. 158*, distinguished. *In re* BURN & Co. (1910)
I. L. R. 37 Calc. 634

RECEIPT FOR MONEY.

——— by one servant from another—

See STAMP-DUTY **I. L. R. 37 Calc. 634**

——— exceeding R20—

See STAMP-DUTY . **I. L. R. 37 Calc. 634**

RECEIVER.

See INSOLVENCY . **I. L. R. 37 Calc. 418**
14 C. W. N. 586

See LIMITATION ACT (XV OF 1877), S 19.
I. L. R. 32 All. 51

——— appointment of—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XL, R 1
14 C. W. N. 248 ; 252

——— assets in the hands of—

See SOLICITOR'S LIEN FOR COSTS.
I. L. R 34 Bom. 484

1. ——— Directions to receiver, if appealable—*Civil Procedure Code (Act V of 1908), o. XL, r 1, cl* (1) (d) *and o XLIII, r. 1* (s) Where both the parties have agreed to the appointment of a receiver of the properties in dispute, and the Court has, in appointing the receiver, given him certain directions as to the disposal of the income : *Held*, that an appeal lies from those directions by virtue of o XLIII, r 1 (*s*) of the Code of Civil Procedure. MOHUNT ANAND DAS *v.* RAM PERKASH DAS (1909) . **14 C. W. N. 183**

2. ——— Execution sale of property in hands of—*Illegality—Civil Procedure Code (Act XIV of 1882), ss 244, 248—Non-service of notice on judgment-debtor if ground for setting aside the sale—Confirmation of sale, effect of.* Where the Receiver appointed by the Court was directed to take possession of moveable properties and of the rents and profits of the immoveable properties and was further authorised to get in and collect all debts and claims due to the estate : *Held*, that he must be taken to have been appointed Receiver in respect of the whole estate and had authority to apply for an order absolute on a decree *nisi* for foreclosure. A sale of the foreclosure decree while the estate was in the possession of the Receiver in execution of a decree for money, without leave of the Court previously obtained, was illegal and liable to be avoided ; and punishment by the procedure for contempt was not the only remedy against such unauthorised sales. The provisions of s. 248 are not mandatory. A sale held without issue of notice under s. 248, Civil Procedure Code (Act XIV of 1882), is therefore not a nullity, but such an omission is a serious irregularity, sufficient to vacate the sale upon an application made by the judgment-debtor under s. 244 of the Code. *Malkarjun* v. *Narhari*, 5 *C. W. N 10 ; s.c. I L. R 25 Bom 337 ; L. R. 27 I. A. 216 ; Parashram* v *Balmukund. I L. R. 32 Bom. 572 ; Erava* v. *Sidramappa, I. L. R 21 Bom. 424, 432 Jogendra Chandra* v *Sham Das,*

RECEIVER—*contd.*

I. L. R. 36 Calc. 543 s c. 9 C. L. J. 271 Such an irregularity is a ground for setting aside the sale even after it has been confirmed. *Ashutosh* v. *Behari Lal, 11 C W. N. 1011 s c. I L R 35 Calc. 61*, referred to A purchaser of property at an execution sale is not protected when grounds for setting aside the sale under s. 244 or 311 are established, merely because he is a stranger *Janukdhari Lal* v. *Gossain Lal, 13 C W N. 716*, referred to. LEVINA ASHTON *v* MADHABMONI DASI (1910) . . . **14 C. W. N. 560**

3. ——— Possession of property by Receiver without succession certificate—*Succession Certificate Act (VII of 1889), ss 4, 8, cl* (*c*)—*Succession (Property Protection) Act. (XIX of 1841)—Succession Act (X of 1865), s. 190—Hindu Wills Act (XXI of 1870)—Probate and Administration Act (V of 1881)—Indian Securities Act (XIII of 1886), ss 3, sub-s* (2), *6, sub-s* (*1*), *cl* (*f*). The position of a Receiver appointed by a Court is analogous to that of a curator appointed under Act XIX of 1841, who is a person claiming to be entitled to the effects of the deceased person whose estate he is appointed to manage. *Babasab* v *Narsappa, I L R. 20 Bom 437*, referred to. The Receiver ordinarily is not the representative or agent of either party to a suit in the administration of the trust, but the appointment is for the benefit of all parties, and he holds the property for the benefit of those ultimately found to be the rightful owners *Jagat Tarini Dasi* v *Naba Gopal Chaki, I L R 34 Calc. 305, Corporation of Bacup* v. *Smith, 44 Ch D 395, Portman* v *Mill, 3 Jurist 356*, referred to In the absence of any provision in the Hindu Wills Act (XXI of 1870) and in the Probate and Administration Act (V of 1881) " that no right to the property of an intestate can be established unless administration had been previously granted by a competent Court," the Receiver appointed by Court is competent to take possession of the securities and moneys without a certificate under s 4 of the Succession Certificate Act ; but regard being had to the provisions of the Indian Securities Act, 1886, s. 3, sub-s. (2), s 6, sub-s. (*1*) cl (*f*), and s 8, cl. (*c*) of the Succession Certificate Act (VII of 1889), a Succession Certificate would be needed if a suit was brought to establish a title to such funds by right of inheritance. HARIHAR MUKERJI *v.* HARENDRA NATH MUKERJI (1910)
I. L. R. 37 Calc. 754

4. ——— Receiver, if a necessary party to rent suit—*Appointment of Receiver, if bars suit by creditor—Receiver, how sued—Civil Procedure Code (Act XIV of 1882), s. 32—Receiver appointed by another Court, if may be added as party by Court of its own motion* Where during the pendency of a suit for rent under the Bengal Tenancy Act, a Receiver was appointed in respect of the entire property of the defendants by another Court and the property for which the rent was claimed vested in him : *Held*, that the Receiver was a necessary party to the suit and if he was not added with the permission of the Court which appointed him, the suit was liable to be dismissed.

REGISTRATION—*concld.*

under s. 74 of the Transfer of Property Act (IV of 1882), effect of. The endorsements on a mortgage-bond of payments made in satisfaction of a mortgage, which payments did not purport to extinguish the mortgage, are covered by cl (*n*) of s. 17 of the Registration Act, and as such do not require registration *Jiwan Ali Beg* v *Basa Mal, I. L. R. 9 All 108* and *Uppalakandi Kunhi Kutti Ali Han* v *Kunnam Mithal Kottaprath Abdul Rahiman, I L R 19 Mad 288*, followed HARI NARAIN BANERJEE *v* KUSUM-KUMARI DASI (1910) . . . **I. L. R. 37 Calc. 589**

REGISTRATION ACT (III OF 1877).

———— **ss. 3, 17.**

See CIVIL PROCEDURE CODE, 1882, s. 375. **I. L. R. 33 Mad. 102**

———— **ss. 3, 1 (*d*), 49.**

See SPECIFIC PERFORMANCE. **14 C. W. N. 65**

———— **s. 17.**

See TRANSFER OF PROPERTY ACT, ss. 55, 123 . . **I. L. R. 34 Bom. 287**

———— **s. 17 (*d*) and proviso**—*Lease not reserving a yearly rent not within the exemption.* The proviso to s 17 (*d*) of the Registration Act will apply only in the case of leases which reserve an annual rent. A lease for a term of 3 years which reserves no annual rent but only provides for the payment of a lump sum, is compulsorily registrable even when such lump sum is less than the aggregate of three annual instalments of R50. VENKATASAM CHETTY *v.* SUPPA PILLAI (1909) **I. L. R. 33 Mad. 216**

———— **s. 17, cls. (*d*), (*h*).**

See LEASE . . **I. L. R. 37 Calc. 808**

———— **s. 17, cl. (*n*).**

See MORTGAGE . **I. L. R. 37 Calc 589**

1. ———— **ss. 17, 49—Release**—*Document compulsorily registrable—Registration by mistake in a wrong book—Mistake not to affect parties—Document duly registered—Endorsement releasing mortgaged property for consideration in cash—Registration* A release whereby a father transferred all his rights of ownership in his immoveable and moveable property in favour of his son was registered not in Book No. 1, but in Book No 4, that is to say, not in the Book kept for the registration of documents compulsorily registrable under s 17 of the Registration Act (III of 1877). *Held*, that the release must be considered as having been duly registered. The father's property was capable of identification and the error of the registrar in registering the document in Book No. 4 should not be allowed to affect the parties prejudicially. *Sorabji Edalji* v. *Ishwardas Jagjivandas, (1892) P. J. 5*, followed. An endorsement made by a mortgagee (on the back of the mortgage-deed) releasing the mortgaged property in consideration of a cash payment of R300 is a document which requires registration, and not being registered was not admissible in evidence either of the redemption of the property or of the real nature of the original transaction between the parties. PARASHRAMPANT *v* RAMA (1909) . . **I. L. R. 34 Bom. 202**

2. ———— **Compromise**—*Registration—Compromise, not embodied in the decree, containing a contract for pre-emption.* The parties to a suit filed a compromise, which, in addition to setting forth the rights of the parties as to the property in suit, went on to provide that if either party sold his share of the property, the other party should have a right to pre-empt. The decree based on this compromise was silent as to the right of pre-emption. *Held*, that the compromise required registration, and, not being registered, could not be used to support a suit for the pre-emption KASHI KUNBI *v.* SUMER KUNBI (1910) . . . **I. L. R. 32 All. 206**

———— **s. 28—Jurisdiction of registering officer**—*Registration—Validity—Property actually within jurisdiction included in conveyance—Vendor found not to have title in it—Fraud, not found.* Where the title to the only item of property sold by a kobala which would give the Sub-Registrar jurisdiction to register it was disputed and ultimately found not to have been in the vendor: *Held*, that this alone, in the absence of fraud on the part of the vendor or the vendee, or collusion between them, would not render the registration of the kobala by the Sub-Registrar invalid, when the property did in fact exist within his jurisdiction. *Baij Nath Tewari* v. *Sheo Sahoy Bhagut, I L R 18 Calc. 556*, distinguished. BROJO GOPAL MUKERJEE *v.* ABHILASH CHUNDRA BISWAS (1910) . . . **14 C. W. N. 532**

———— **s. 33**—*Registration—Presentation of document by agent holding a power-of-attorney—Authentication of power.* A document was presented for registration by the agent of a *pardanashin* lady acting under a power-of-attorney authorizing him generally to present documents for registration on behalf of his principal The power-of-attorney was not executed in the presence of the Sub-Registrar; but the Sub-Registrar had gone to the house of the executant, questioned her, and satisfied himself that the power of attorney have been voluntarily executed and had endorsed the power-of-attorney with a statement that he had so satisfied himself. *Held*, that the power-of attorney was properly executed and authenticated within the meaning of s. 33 of the Indian Registration Act, 1877, and the document presented by the executant's agent was validly presented CHHUTTAN LAL *v.* SHIAM PRASAD (1909) **I. L. R. 32 All. 179**

———— **s. 77**—*Suit for direction to register documents—Scope of enquiry—Issues—Execution—Compliance with requirements of law—Effect and binding nature of the documents.* In a suit for a

REGISTRATION ACT (III OF 1877)—*concld*

———— **s. 77**—*concld.*

decree directing the registration of certain documents, the enquiry in Court is to be directed to two points only, namely, (*a*) whether the documents had been executed; and (*b*) whether certain requirements of the law as to presentation for registration in due time to the proper office, and in the manner generally prescribed by the Registration Act, had been complied with by the person presenting the documents for registration *Raj Lackhi Ghosh* v. *Debendra Chundra Mojumdar, I. L R 24 Calc. 668; Balambal Ammal* v *Arunachala Chetti, I L. R. 18 Mad 255, Kanhaya Lal* v. *Sardar Singh, I L. R. 29 All. 284.* The defendant in such a suit may possibly have good reasons why he should not be bound by the documents, but the law does not allow him to advance such reasons in a suit under s. 77 of the Indian Registration Act. W. W BROUCKE *v* RAJAH SHAHEB MOHAN BIKRAM SHAH (1909) **14 C. W. N. 12**

REGISTRATION ACT (XVI OF 1908).

———— **s. 17—Agreement to retransfer**—*Agreement to re-transfer property sold on repayment of price with interest if must be registered.* Where contemporaneously with a registered deed of sale a document was executed whereby the transferee agreed to retransfer the property to the transferor upon payment by the latter of the sale-price with interest within a specified period: *Held*, that the document was not a reconveyance and did not require registration DWARKA NATH SEN *v.* KESORY LALL GOSWAMI (1910) . . . **14 C. W. N. 703**

REGULATIONS.

———— **1818—III.**

See LIBEL . . **I. L. R. 37 Calc. 760**

———— **1819—VIII, s. 14.**

See LIMITATION ACT. 1877, s 8. **14 C. W. N. 128**

———— **1827—II.**

———— **s. 21—Caste question**—*Civil Court Jurisdiction—Suit to be declared Ayya of Hiremath and to restrain defendant from so styling himself.* The plaintiff sued to obtain a declaration that he was entitled to the fees and privileges appertaining to the Hiremath at Kamalapur by reason of his title to be called the Ayya of that Hiremath, and to obtain a perpetual injunction to restrain the defendant from using the name of "Ayya of Hiremath." The plaintiff's complaint was that the defendant had assumed a name to which the plaintiff had the exclusive right, and that that assumption would enable, as it had enabled, the defendant to attract to himself a large number of the plaintiff's followers, and thereby appropriate to himself fees, which would otherwise have been paid to the plaintiff. *Held*, that it was a claim to a caste office and to be entitled to perform the honorary duties of that office or to enjoy certain

REGULATIONS—*concld.*

———— **1827—II**—*concld.*

———— **s. 21**—*concld.*

privileges and honors at the hands of the members of the caste in virtue of that office. It was a caste question not cognizable by a Civil Court. *Held*, also, that the fact that there had been no allegation of any specific damage by reason of the assumption by the defendant of the name of Ayya of Hiremath, and also the admission that after all the result of the assumption of that name would be merely to enable some of the followers of the plaintiff to go over to the defendant showed that what the parties had been fighting for was merely a question of dignity under the cover of a religious office. If the Court were to interfere in such cases, it would be merely assisting one party at the expense of the other and compelling the caste or the sect to follow one spiritual leader in preference to another. GADIGEYA *v.* BASAYA (1910) **I. L. R. 34 Bom. 455**

RE-HEARING.

See AFFIDAVIT . **I. L. R. 37 Calc. 259**

RELEASE.

See REGISTRATION ACT, SS. 17, 49. **I. L. R. 34 Bom. 202**

RELIEF.

See DIVORCE . **I. L. R. 37 Calc. 613**

RELIGIOUS ENDOWMENTS ACT (XX OF 1863).

———— **s. 5**—*District Court if may appoint a trustee pending decision of Civil Court, in all cases.* District Courts have no power, upon a vacancy occurring in the office of the trustee of a religious endowment, to appoint a trustee under s. 5 of the Religious Endowments Act unless the endowed property has been actually transferred to the former trustee under s. 4 of the Act by the Board of Revenue or Government. *Ittuni Panikkar* v. *Irani Nambudripad, I. L. R. 3 Mad. 401; Jan Ali* v. *Ram Nath Mundul, I. L. R. 8 Calc. 32*, relied on. *Dhurrum Singh* v. *Kissen Singh, I. L R. 7 Calc. 767; Sheoratan Kunwari* v *Ram Pargash, I L R. 18 All. 227; Muhammad Sirajul Haq* v. *Imamuddin, I. L R. 19 All 104*, distinguished. S 5 of the Act contemplates the temporary appointment of a manager by the Court pending the decision by a Civil Court of the title of any other applicant to the office. MOHUNT SHEONANDAN GIR *v.* DHUPAN UPADHYA (1910) **14 C. W. N. 1104**

———— **s. 18.**

See CIVIL PROCEDURE CODE, 1882, s. 622. **I. L. R. 33 Mad. 412**

RELINQUISHMENT.

————**in favour of sentient person—**

See HINDU LAW—WILL. **I. L. R. 37 Calc. 128**

RELINQUISHMENT—*concld.*

——— of claim—

See CIVIL PROCEDURE CODE, 1882, s. 43
I. L. R. 32 All. 625

REMAND.

See APPEAL . **I. L. R. 37 Calc. 426**

——— Parties, addition of—*Civil Procedure Code (Act XIV of 1882), s 564—Order of remand by Appellate Court directing addition of party, whether legal* An order of remand under s 564 of the Civil Procedure Code (Act XIV of 1882) by the Appellate Court, directing addition of parties, is an order upon a preliminary point, and, as such, is not illegal *Habib Bakhsh* v *Baldeo Prasad, I L R 23 All 167*, followed. JADAB GOBINDA SINGH *v* ANATH BANDHU SAHA (1909) . **I. L. R. 37 Calc. 171**

RE-MARRIAGE.

See HINDU WIDOWS RE-MARRIAGE ACT (XV OF 1856), s. 2.
I. L. R. 32 All. 489

——— by Hindu widow—

See HINDU WIDOWS RE-MARRIAGE ACT.
14 C. W. N. 346

RENT.

——— in kind—

See LANDLORD AND TENANT—ENHANCEMENT OF RENT . **I. L. R. 37 Calc. 610**

——— partly in money, partly in kind—

See KABULIYAT, CONSTRUCTION OF.
I. L. R. 37 Calc. 626

——— permanency of—

See LANDLORD AND TENANT.
I. L. R. 37 Calc. 30

——— ——— *Provincial Small Cause Courts Act (IX of 1887), Sch. II, Art 8—Rent of a ferry, suit for, if cognisable by a Small Cause Court.* To determine whether an amount payable under a contract is rent or not each case must be judged by its own circumstances. In a suit to recover sums due under a contract for the defendant plying boats in a private ferry : *Held*, that in the circumstances of the case the sum payable was in no sense a rent PROHLAD PATNI *v.* SASHADHAR RAI (1910) . **14 C. W. N. 994**

RENT-DECREE.

——— Contribution suit—*Contract Act (IX of 1872), ss. 69, 70—Suit for contribution, if lies for payment by one judgment-debtor of joint-decree—'Lawfully paid,' money paid by one judgment-debtor to satisfy joint-decree—Res judicata—Plea of non-liability in contribution suit, if barred in equity where Defendant acquiesced in original claim.* A decree was passed against several persons jointly in a rent suit and one of them paid the whole amount of the decree. This judgment-debtor subsequently brought a suit for contribution against some of his co-judgment-debtors. The defendants pleaded that they were *benamdars* and not really liable for payment under the decree : *Held*, that although the decree in the rent suit was not *res judicata* as between co-defendants, the co-judgment-debtors should not be allowed to plead non-liability in the contribution suit If they had such a plea they ought to have raised it in the rent suit *Siva Panda* v *Jujisti Panda, I. L R 25 Mad. 599*, referred to It is a recognised principle of equity that where of two innocent persons one must suffer by the act of a third he by whose negligence it happened must be the sufferer So even if the defendants were *benamdars*, as they allowed their names to be used in the kobala and the zemindar's sherista and did not object when the zemindar brought a suit against them, they cannot be heard to complain if they are compelled to reimburse the plaintiff for what he had done for them. *Umesh Chandra* v. *Khulna Loan Co, I. L. R. 34 Calc 92*, referred to No hard and fast rule can be laid down barring the application of s. 69 of the Indian Contract Act to the payment of a joint decree by one of the joint judgment-debtors. *Futtehali* v. *Ganga Nath, I L R 8 Calc 113, Mathura Nath* v. *Kristo Kumar, I L R. 4 Calc 369; Manindra Chunder* v *Jamaher Kumari, 9 C W. N. 670*, discussed. But where the decree was for a share of the rent by a fractional proprietor and was executed against the plaintiff alone, any interest other than that of the plaintiff was not imperilled, and the plaintiff could not be said to have been interested in the payment of that part of the decree which was leviable from the defendants, and could not recover the amount so paid by a suit for contribution under s. 69 of the Indian Contract Act. But the payment by the plaintiff was 'lawful' within the meaning of s. 70 of the Indian Contract Act and he could recover on it under that section from the defendants who had been benefited by it. An interest in making the payment should be a criterion for deciding whether the payment was 'lawful' within the meaning of s 70 of the Contract Act. *Chedi Lal* v *Bhagwan Dass, I L. R 11 All. 234, Damodara Mudaliar* v *Secretary of State, I. L. R. 18 Mad. 88, Gordhan* v *Durbar Sree Suraj Malu, I. L R 26 Bom 504; Smith* v. *Dina Nath, I. L. R. 12 Calc. 213; Baikunto Nath* v *Udoy Chand, 2 C. L. J. 311, 313*, discussed AJODHYA SINGH *v.* JAMROO LAL (1910) . . **14 C. W. N. 699**

RENT RECOVERY ACT (X OF 1859).

——— ss. 27, 105 to 110.

See UNDER-TENURE, SALE OF
I. L. R. 37 Calc. 823

RENT RECOVERY ACT (MAD. VIII OF 1865).

——— ss. 3, 11—Varam rate—*Rate of rent, ascertaining of—Right of landlord to varam rate on wet crop raised on dry lands, when no contract for the rent chargeable* By agreement between the landlord and tenant, a permanent money rent was

RENT RECOVERY ACT (MAD. VIII OF 1865)—*contd.*

——— s. 3—*concld.*

fixed for dry cultivation and the agreement provided for extra charge for wet and garden crops without however stating the amount of such charge. The land was subsequently cultivated with wet crop, without any assistance from the landlord, and the tenants took objection to the *varam* rate claimed by the landlord :—*Held*, that the landlord had the right to claim the *varam* rate, as there was no contract in regard to the rent payable for wet cultivation. The contract having left the rate for wet cultivation undetermined was not a contract within the meaning of s. 11 of the Act. Where, under the circumstances, the landlord becomes entitled to *varam* rate under s. 11 of the Rent Recovery Act, his claim to such rate cannot be objected to on the ground that the rent is thereby increased and it is not necessary to obtain the sanction of the Collector. In the absence of contract or survey rates, the landlord is entitled to *varam* rate under cl. 3 of the section. An enquiry to determine the rate according to local usage is not necessary to enable the landlord to claim *varam* rates. SIR RAJA BOMMADEVARA VENKATA NARASIMHA NAYUDU *v.* KASARANEVI CHINA BAPAYYA (1908)
I. L. R. 33 Mad. 12

——— s. 9—*Tender of Pattas on produce sharing system—Allegation by tenants that money system prevailed—Prevalence of money rent for series of years—Alleged express contract to make prevailing rate permanent—Implied contract, presumption of—Evidence in considering usage prevailing—Remand of cases for determination of proper rate when no contract exists.* The appellant, a zamindar, brought suits against the respondents, the tenants in a village on his estate, under s. 9 of the Madras Rent Recovery Act (Madras Act VIII of 1865) to enforce of pattas tendered by him, and the execution of corresponding muchilkas. The pattas tendered were under the Asara, or produce sharing system, which the respondents denied was in force in their village, money rates, as they alleged, being the proper form of rent. It appeared that in 1299 (1889) different rates of rent prevailed in the village, some being higher than Rs5, and others lower; that in that year a uniform rate of Rs5 per acre was introduced by mutual agreement between the appellant and respondents, and leases were exchanged on that basis for a term of 5 years. The respondents alleged that the appellant at that time expressly agreed that the rate of Rs5 should be permanent. The High Court did not uphold the express agreement, but found there was an implied contract to be inferred from the fact that rents at the same rate were paid and received for four years after the expiration of the term fixed by the leases of 1299, the presumption being that such rate of rent should continue the same in perpetuity :— *Held*, by the Judicial Committee, that there was, alongside of the express contract embodied in the leases exchanged between the parties, no proof of any such collateral implied agreement relating to fixity of rent. Any understanding of the kind was denied by the appellant, and no credible explanation was given by the respondents why, if it existed, such an important arrangement was not reduced to writing. Whilst agreeing with the High Court that it was not open to Courts to imply, from the mere circumstance that the rent had been paid in money for a series of years, an agreement to pay money rent, their Lordships saw no reason why the fact that money rent had prevailed in a particular locality for a considerable number of years might not form an element in the consideration of usage. The real question between the parties not having been decided, namely, whether the pattas tendered by the appellant were such as he was entitled to impose on the respondents, a question which, it having been found that there was no express or implied contract, must be decided in accordance with the rules contained in cl. (m) of s. 11 of Act VIII of 1865 which dealt with the mode of determining the rate when no contract exists, their Lordships remanded the cases to the proper Court in India to determine under those provisions the *rates* the appellant was entitled to receive. PARTHASARATHI APPA ROW *v.* CHEVANDRA VENKATA NARASAYYA (1910)
I. L. R. 33 Mad. 177

RENT RECOVERY ACT (MAD. VIII OF 1865)—*concld.*

——— s. 9—*concld.*

REPRESENTATION.

See HEREDITARY OFFICES ACT (BOM. III OF 1874), ss. 25, 36.
I. L. R. 34 Bom. 101

——— **principle of—**

See LANDLORD AND TENANT.
I. L. R. 37 Calc. 75

——— **Deceased defendant**—*Executor not substituted—Decree passed against heirs, if binding on the estate—Will.* *B*, one of the defendants in a money suit brought by *P*, died during the pendency of the suit leaving a will in favour of the plaintiff in the present suit. On *P*'s application the heirs of *B* were substituted as defendants in her place and the plaintiff's application for substitution of his own name was rejected as he had not obtained probate of *B*'s will. A decree was passed *ex parte* and the property sold in execution thereof: *Held*, that the estate of *B* was not properly represented in the suit, and that so far as the estate covered by the will was concerned it was not affected by the decree or the sale. *Baswantapa* v. *Ranu, I. L. R. 9 Bom. 86; Khiaraj-mul* v. *Diam, 9 C. W. N. 201 s.c. I. L. R. 32 Calc. 296 : L. R. 32 I. A. 23; Matangini Dasi* v. *Chooney Moni Dasi, I. L. R. 22 Calc. 903*, followed. *Prosunno Chunder Bhattacharjee* v. *Krista Chaitanya Pal, I. L. R. 4 Calc. 342, Chuni Lal Bose* v. *Osmond Beeby, I. L. R. 30 Calc. 1044*, distinguished. HARISH CHANDRA BISWAS *v.* PURIDAS DAS (1910)
14 C. W. N. 1041

REPUTATION.

See LIBEL . **I. L. R. 37 Calc. 760**

RESALE.

——— of tenure—

See BENGAL TENANCY ACT. S. 65
14 C. W. N. 1096

RESISTANCE BY STRANGER.

See EXECUTION OF DECREE.
14 C. W. N. 836

RES JUDICATA.

See AGRA TENANCY ACT (II OF 1901), S 199 . . **I. L. R. 32 All. 8**

See BENGAL TENANCY ACT, S. 103B
14 C. W. N. 364

See CIVIL PROCEDURE CODE, 1882, S. 13.
I. L. R. 32 All. 215

See CIVIL PROCEDURE CODE, 1882, SS. 13, 43 . . . **I. L. R. 32 All. 119**

See CIVIL PROCEDURE CODE, 1882, SS 13, 30 . . **I. L. R. 33 Mad. 483**

See CIVIL PROCEDURE CODE, 1882, SS 13, 525 AND 526 . **I. L. R. 32 All. 484**

See CIVIL PROCEDURE CODE, 1882, S. 102.
14 C. W. N. 298

See CIVIL PROCEDURE CODE, 1882, S 375.
I. L. R. 33 Mad. 102

See CIVIL PROCEDURE CODE, 1908, S 11.
I. L. R. 32 All. 67

See CIVIL PROCEDURE CODE, 1908, S. 53
I. L. R. 32 All. 210

See EXECUTION PROCEEDINGS.
14 C. W N. 114, 433

See EXECUTOR DE SON TORT, LIABILITY AS . . **I. L. R. 33 Mad. 423**

See LIMITATION ACT (XV OF 1877), SS 5 AND 7 . . **I. L. R. 34 Bom. 589**

See PARTITION . **I. L. R. 32 All. 469**

See PROBATE . . **14 C. W. N. 924**

1. ——— **Adjudications**—*Res judicata between co-defendants—Burden of proof.* Where an adjudication between co-defendants is necessary to give the appropriate relief to the plaintiff, such adjudication will be *res judicata* between the defendants as well as between the plaintiff and defendants There must be a conflict of interest between the defendants, a necessity for a decision between them and a judgment defining the rights and obligations of the defendnats *inter se. Ramchander Narayan* v *Narayan Mahadev, I. L. R. 11 Bom. 216, 220,* referred to and followed. The general rule is that a person who claims property through some other person must prove that such property vested in that other person. A person who alleges that property in the hands of a female was inherited from some person whose heir he claims to be, must prove that it belonged to that

RES JUDICATA—*concld.*

person. *Diwan Ran Brjai Bahadur Singh* v. *Indarpal Singh, L. R. 26 I. A. 226, 228,* referred to. NARASIMMA AMMAL *v.* SRINIVASARAGAVA AIYANGAR (1909) . . . **I. L. R. 33 Mad. 112**

2. ——— **Matter substantially in issue** —*Capacity of parties—Civil Procedure Code (Act XIV of 1882), s. 13.* The plaintiff in conjunction with another had in 1902 filed a suit against the defendant for possession of certain property, basing his claim on the allegation that he was owner. He succeeded in the first Court, but the Court of Appeal held that the property had been dedicated to charity, and refused to uphold his claim as owner The plaintiff declined to adopt the Court's suggestion to modify his claim and be content to ask for a decree for possession as manager, and his suit was therefore dismissed. Five years later he filed the present suit, claiming possession as manager. *Held,* that his title as manager was one which might and ought to have been put forward in the previous suit, and that his present claim was therefore *res judicata.* If a plaintiff is suing in a capacity in which he is a stranger to the capacity in which he sued in a former suit, his claim has no proper connection with that former suit, and the Civil Procedure Code (Act XIV of 1882), s. 13, does not apply. HARGOVAN RAMJI *v.* MULJI HARJIVAN (1909)
I. L. R. 34 Bom. 416

3. ——— **Practice**—*Suit against defendant on ground which failed not to be decreed on another ground—Application for leave to amend plaint after arguments heard in appeal disallowed* A suit brought against the defendants on one ground which fails should not be decreed against them on another ground which they had no opportunity of meeting After arguments in appeal have been heard the Court will not allow an amendment of the plaint so as to convert a suit of one character into a suit of a substantially different character. *H* filed a suit in 1904 against *A* and *J* the drawer and indorser respectively of two hundies. At the time of filing the suit *J* was dead *H* obtained a decree against both defendants, which decree remained unsatisfied. In 1905 *H* filed a suit against the heirs of *J* on the same two hundies. *Held,* that the earlier suit having been filed against the firm of *J* and not against *J* personally was a bar to the later suit. BAYABAI *v.* HAJI NOOR MAHOMED (1908)
I. L. R. 34 Bom. 244

RESTITUTION.

See CIVIL PROCEDURE CODE 1882, S. 583 . . **I. L. R. 32 All. 79**

RESTITUTION OF CONJUGAL RIGHTS.

——— **Jurisdiction**—*Valuation of claim—Jurisdiction of Second Class Subordinate Judge to entertain the suit—Bombay Civil Courts Act (XIV of 1869), s. 24—Suits Valuation Act (VII of 1887), s. 11.* A suit for restitution of conjugal rights, wherein the claim was valued by the plaintiff at

RESTITUTION OF CONJUGAL RIGHTS—*concld.*

R65, was instituted in the Court of the Second Class Subordinate Judge. The First Court decreed the claim : and on appeal the decree was confirmed. On second appeal it was contended that the First Court had no jurisdiction to try the suit. *Held*, that the valuation of the claim by the plaintiff must be accepted for the purpose of jurisdiction, unless it was shown to have been made either from any improper motive or deliberately for the purpose of giving the Court a jurisdiction which in fact it had not. *Jan Mahomed Mandal* v *Mushar Bibi*, *I. L. R. 34 Calc. 352*, followed. JASODA *v* CHHOTU (1909) . . . . **I. L. R. 34 Bom. 236**

RESTORATION OF SUIT.

———— *Decree set aside for fraud—Order of Court of concurrent jurisdiction, if effective to restore suit.* Where a decree obtained in a Court of equal jurisdiction was set aside by another Court which went on to add that the result of the decree being declared fraudulent would be that the original suit would be restored. *Held*, that this order of a Court of equal jurisdiction could not operate as a direction to the first Court to restore the suit and that in refusing to restore the suit the Court had committed no error. KHETTRA MOHUN BARIK *v.* MANGOBINDA PAL (1910) . . . . . **14 C. W. N. 558**

RESUMPTION BY GOVERNMENT.

See CHAUKIDARI CHAKRAN LANDS.
I. L. R. 37 Calc. 57

See SHETSANADI LANDS.
I. L. R. 34 Bom. 560

RETRACTION OF STATEMENT BY WITNESS.

See SANCTION FOR PROSECUTION.
I. L. R. 37 Calc. 618

REUNION.

See HINDU LAW—PARTITION.
I. L. R. 37 Calc. 703

REVENUE COURT.

———— **jurisdiction of—**

See CERTIFICATE OF SALE
I. L. R. 37 Calc. 107

REVENUE JURISDICTION ACT (X OF 1876).

———— **s. 4, sub-s.** (*a*)—*Act XI of 1852—Land held as Saranjam—Decision of the Inam Commissioner—Finality—Suit for declaration of title and possession—Exclusion of jurisdiction of Civil Courts.* In the year 1858 the Inam Commissioner decided that a certain estate was Saranjam of *P* and not his Sarv Inam. On *P*'s death in 1899 Government resumed the estate on the ground that it was Saranjam and re-granted it to *V*, one of *P*'s grandsons. Subsequently the plaintiff, another grandson of *P*, brought a suit against the Secretary

REVENUE JURISDICTION ACT (X OF 1876)—*concld.*

———— **s. 4**—*concld.*

of State for India and *V* for declaration of title and possession, on the ground that the immoveable property in suit was plaintiff's Sarv Inam property and could not be taken from his possession by Government or its officers or re-granted to any one else. *Held*, (i) that the decision of the Inam Commissioner was, by virtue, of the provisions of Rule 2, Sch A of Act XI of 1852, final as regards the land and interests concerned in the decision. (ii) That after such final decision, the title and continuance of the estate must be determined under Sch. B, Rule 10 of the Act, under such rules as Government may find it necessary to issue from time to time. (iii) That in accordance with those rules the estate was, on *P*'s death, resumed by Government who re-granted it to *V*. *Held*, further, that the suit having been against Government relating to land as Saranjam was excluded from the jurisdiction of the Civil Courts by the provisions of sub-s. (*a*) of s. 4 of the Revenue Jurisdiction Act (X of 1876) RAMRAV GOVINDRAO *v* SECRETARY OF STATE (1909) . . **I. L. R. 34 Bom. 232**

REVENUE RECOVERY ACT (MAD. II OF 1864).

———— **ss. 3, 35**—'*Defaulter*' *who is—Defaulter means registered pattadar—Contract Act, s. 69* Where one person is the real owner of a share in land and another is the registered proprietor of the whole, the latter and not the former is the 'defaulter' within the meaning of the Revenue Recovery Act ; and where the latter as mortgagee of a share of the land not owned by the former has paid the arrears of revenue due on the whole land and the former has paid the revenue, of his share, he cannot, being himself the defaulter, recover the amount from the former under s. 35 of the Revenue Recovery Act. The latter cannot recover under s. 69 of the Contract Act as the former is not bound by law to pay the money which the latter has paid. SUBRAMANIA CHETTY *v.* MAHALINGASAMI SIVAN (1909)
I. L. R. 33 Mad. 41

REVERSIONER.

See HINDU LAW—GIFT.
I. L. R. 37 Calc. 1

See HINDU LAW—WIDOW.
14 C. W. N. 226
I. L. R. 32 All. 176

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 6, CL. (*a*) . **I. L. R. 32 All. 88**

———— **suit by—**

See HINDU LAW . **I. L. R. 33 Mad. 410**

REVIEW.

See APPEAL . . **14 C. W. N. 244**

———— **Power of Collector to review his own order.** The Collector has no power

REVIEW—*concld.*

to review his own order refusing to interfere with an order passed by his subordinate, confirming a sale for arrears of land revenue. DAVID NADAR *v.* MANIKKA VACHAKA DESIKA GNANA SAMBANDA PANDARA SANNADI (1909) . **I. L. R. 33 Mad. 65**

REVIEW OF JUDGMENT.

See CIVIL PROCEDURE CODE, 1908, ss. 14, 151 ; O. XLVII, R. 1. **I. L. R. 32 All. 71**

REVISION.

See CIVIL PROCEDURE CODE, 1908, s. 115 **I. L. R. 32 All. 623**

See CRIMINAL PROCEDURE CODE, ss 145, 439 . . **I. L. R. 32 All. 132**

See CRIMINAL PROCEDURE CODE, ss. 345 (2) AND 439 . . **I. L. R. 32 All. 153**

See INSOLVENCY . **14 C. W. N. 143**

See JURISDICTION **I. L. R. 34 Bom. 267**

See SANCTION FOR PROSECUTION. **I. L. R. 37 Calc. 13**

REVISIONAL JURISDICTION.

——— over Presidency Small Cause Court—

See HIGH COURT, ORIGINAL SIDE, JURISDICTION OF . **I. L. R. 37 Calc. 714**

REVIVAL OF PENDING EXECUTION.

See MORTGAGE . **I. L. R. 37 Calc. 796**

REVOCATION.

See PROBATE . **I. L. R. 37 Calc. 387**

RICE MERCHANTS' ASSOCIATION RULES.

See JURISDICTION . **I. L. R. 34 Bom. 13**

RIGHT OF CROSS-EXAMINATION.

——— continuance of—

See CROSS-EXAMINATION. **I. L. R. 37 Calc. 236**

RIGHT OF OCCUPANCY.

See LANDLORD AND TENANT. **I. L. R. 37 Calc. 449**

RIGHT OF SUIT.

1. ——— *Non-service of Summons—Fraud—Civil Procedure Code (Act XIV of 1882), s. 108—Ex parte decree.* A fresh suit would not lie to set aside a decree on the mere ground of non-service of summons, though it would be maintainable on the ground of fraud. *Radha Raman Shaha* v. *Pran Nath Roy, I. L. R. 28 Calc. 475*, and *Khagendra Nath Mahata* v. *Pran Nath Roy, I. L. R. 29 Calc. 395*, referred to. *Puran Chand* v. *Sheodat Rai, I. L. R. 29 All. 212*, followed. NARSINGH DAS *v.* RAFIKAN (1909) **I. L. R. 37 Calc. 197**

RIGHT OF SUIT—*concld*

2. ——— *Suit by person not a party to an instrument sustainable when charge created in such person's favour—Decrees for relief not specifically asked for when allowable.* A plaintiff asking for certain specific reliefs and for such other relief as the Court should deem fit, should, on being found disentitled to the specific reliefs asked for, be given such relief as the circumstances justify. A person who is no party to a document but in whose favour a charge is created by such document is entitled to maintain a suit to enforce its terms either as the actual beneficiary or as the charge-holder. SHUPPU AMMAL *v.* SUBRAMANIYAN (1909) . **I. L. R. 33 Mad. 238**

RIGHT OF TRIAL BY JURY.

See JURY, RIGHT OF TRIAL BY. **I. L. R. 37 Calc. 467**

RIGHT TO PARTITION

See PARTITION . **I. L. R. 37 Calc. 918**

ROAD CESS.

——— arrears of—

See PUBLIC DEMANDS RECOVERY ACT, s. 10 . . . **14 C. W N. 607**

RULES UNDER THE BENGAL TENANCY ACT (VIII OF 1885).

——— rule 40—

See JUDICIAL PROCEEDING. **I. L. R. 37 Calc. 52**

SALE.

See JURISDICTION **I. L. R. 34 Bom. 13**

See PRE-EMPTION **I. L. R. 34 Bom. 567**

See RECEIVER . **14 C. W. N. 560**

See TRANSFER OF PROPERTY ACT, 1882, s. 54 . **I. L. R. 34 Bom. 139**

See TRANSFER OF PROPERTY ACT, s. 55, CL. 4 (*b*) . **I. L. R. 33 Mad. 446**

See TRANSFER OF PROPERTY ACT, ss. 55, 123 . . **I. L. R. 34 Bom. 287**

——— application to set aside—

See CIVIL PROCEDURE CODE, 1882, s. 244. **14 C. W. N. 823**

——— of mortgaged property—

See MORTGAGE . **I. L. R. 37 Calc. 282**

——— of right, title and interest of mortgagor—

See TITLE . **I. L. R. 37 Calc. 239**

——— stay of—

See MORTGAGE **I. L. R. 37 Calc. 897**

SALE—*concld.*

——— **validity of, against bonâ fide purchaser**—

See CERTIFICATE OF SALE.

I. L. R. 37 Calc. 107

——— **Order for stay of**—*Order becomes effective only when communicated to the lower Court.* An order by the Appellate Court for stay of sale takes effect only when communicated to the lower Court ; and a sale by the lower Court after the passing of the order but before the order was communicated is valid *Besseswari Chowdhurany* v. *Horosunder Mozumdar, 1 C. W. N. 226*, followed. *Hukum Chand Bord* v. *Kamalanand Singh, I. L. R. 33 Calc. 927*, not followed. MUTHUKUMARASAMI ROWTHER MINDA NAYINAR *v.* KUPPUSAMI AIYANGAR (1909)

I. L. R. 33 Mad. 74

SALE-DEED.

See EVIDENCE ACT, 1872, s 92.

I. L. R. 34 Bom. 59

SALE FOR ARREARS OF REVENUE.

——— **Irregularity**—*Substantial Loss—Sale Notification, incorrect entry in—Notice—Beng. Act VII of 1868, ss. 8, 11—Beng. Act XI of 1859, s. 33.* An incorrect entry in a sale notification, resulting in misleading intending bidders, is an irregularity such as is contemplated by s. 33 of Bengal Act XI of 1859. *Deonandan Singh* v. *Manbodh Singh, I. L. R. 32 Calc. 111*, discussed. Though s. 8 of Bengal Act VII of 1868 prevents a plaintiff from proving any irregularity in the service of notice required by s. 11, yet it would not prevent him from proving that a notice in contravention of the provisions of that Act was served in a wrong mehal which in itself and by its service supported the conclusion that the mis-statement in the sale notification constituted a serious irregularity RAJRANI DASSI *v.* GANESHPRASAD SRICHANDAN MAHAPATRA (1910) . . . **I. L. R. 37 Calc. 407**

2. ——— **Incumbrance**—*Lis pendens, if applies to property attached in execution of money-decree—Attachment in execution of money-decree, if creates a charge—Revenue Sale Law (Act XI of 1859), s. 54—Attachment, if incumbrance—Sale for arrears of revenue, if alienation by proprietor.* The doctrine of *lis pendens* is applicable to sales *in invitum*. The doctrine is applicable to proceedings to realise the mortgage-money after a decree for sale of the property. But where a property not mortgaged is attached in execution of a money-decree the doctrine of *lis pendens* does not apply to the sale of that property. Where a property was attached in execution of a money-decree and in the course of the execution proceedings was sold for arrears of revenue : *Held*, that the attachment did not create any title or charge on the property and did not constitute an incumbrance within the meaning of s. 54 of Act XI of 1859. *Frederick Peacock* v. *Madan Gopal, I. L. R. 29 Calc. 428* . *s.c. 6 C W. N. 577 ; Moti Lal* v. *Karrabuddin Singh, I. L. R. 25 Calc. 179*, referred to. *Peari Lal Singh* v. *Chandi*

SALE FOR ARREARS OF REVENUE—*concld.*

Charan Singh, 5 C. L. J 80 s.c. 11 C. W. N. 163, distinguished. *Held*, further, that a sale for arrears of Government revenue cannot be regarded as an alienation made by the proprietor so as to make the doctrine of *lis pendens* applicable. MAHADEO SARAN SAHU *v.* THAKUR PRASAD SINGH (1910) . . . . **14 C. W. N. 677**

3. ——— *Incumbrance or under-tenure, how avoided and when—Mesne profits—Liability of several classes of tenure-holders—Damages.* An incumbrance or under-tenure is not *ipso facto* avoided by the sale of an estate for arrears of revenue, and is only liable to be avoided at the option of the purchaser at such sale. *Titu Bibi* v *Mohesh Chunder Bagchi, I. L. R. 9 Calc. 683*, followed. The law does not require any notice as a necessary preliminary to a suit to avoid an under-tenure, but the option of the purchaser may be exercised by the institution of a suit within the time approved by law. Where such a suit has been instituted, the tenure must be regarded annulled from the date of the commencement of the suit. For the period antecedent to a suit for annulment of an incumbrance, the possession of the under-tenure holder is not wrongful, and purchasers at the revenue sale are not entitled to claim by way of damages for use and occupation any sum in excess of what actually represents the rent payable by the tenure holder of the first degree. A decree for rent in such a case can be made only against such of the defendants as held the tenures directly under the defaulting proprietors, and not against all of them jointly and severally. In respect of mesne profits which accrue during the pendency of a suit for possession, the liability of different tenure-holders of the same degree, and of separate under-tenure-holders of different degrees, should be apportioned according to the share of the profits intercepted by each. *Jotindra Mohun Lahiri* v. *Guru Prosunno Lahiri, I. L. R. 31 Calc. 597 ; L. R. 31 I. A. 94*, referred to. A release of one joint wrong-doer without any intention to release the other joint tort-feasors, but only as a partial satisfaction, discharges the others only *pro tanto*. Where the plaintiffs released some of the wrong-doers from liability, the claim against the others have been split up by their own conduct, and a joint decree ought not to be passed against all the defendants *Bissonath Tewarry* v. *Koylashbany Narain Singh, 2 Hay 297*, followed. RAMRATAN KAPALI *v.* ASWINI KUMAR DUTT (1910)

I. L. R. 37 Calc. 559

SALE IN EXECUTION OF DECREE.

——— **Caveat emptor, doctrine of**—*Sale in execution of decree—Refund of purchase-money, suit for—Civil Procedure Code (Act XIV of 1882), ss. 313, 315.* Under s. 313 of the Civil Procedure Code (Act XIV of 1882), a purchaser can apply to have a sale set aside on the ground that the person whose property purported to be sold, had no saleable interest therein. The doctrine of *caveat emptor* has not the same effect under

SALE IN EXECUTION OF DECREE— *concld.*

the Code of Civil Procedure of 1882 as under the old Code (VIII of 1859). *Dosab Ally Khan* v. *Executors of Khajah Moheeooddeen, I L. R. 3 Calc 806,* and *Sowdamınee Chowdhraın* v. *Kishen Kishore Poddar, 12 W. R. 8 F B.*, distinguished. Under s. 315 of the Civil Procedure Code (Act XIV of 1882), a suit lies to recover purchase-money paid at a Court-sale for property to which the judgment-debtor had no title or saleable interests *Hari Doyal Singh Roy* v *Sheikh Samsuddin. 5 C. W. N. 240,* and *Nityanund Roy* v. *Juggat Chandra Ghuha, 7 C W N. 105,* followed. RAM KUMAR SHAHA *v.* RAM GOUR SHAHA (1909) . **I. L. R. 37 Calc. 67**

SALE NOTIFICATION.

——— incorrect entry in—

See SALE FOR ARREARS OF REVENUE.
I. L. R. 37 Calc. 407

SALE OF GOODS ACT (56 & 57 VIC., C. 71).

——— ss. 45 and 47—Stoppage in transitu— *Ultimate destination of goods—Duration of transit—Pledgee of bill of lading—Measure of damages—Sale of Goods Act (56 and 57 Vic., c 71), ss. 45 and 47.* The plaintiffs, a Bombay firm, imported hardware goods from M & Co of Manchester for sale on commission, the business being carried on and financed in the following manner. M. & Co., on shipping the goods, handed over the complete shipping documents to *B*, and received from him an advance of 65 per cent. of the invoice price. *B* then handed over the shipping documents to the National Bank of India in England, and himself received a similar advance by drawing on a credit opened with the Bank by the plaintiffs. The Bank then forwarded the shipping documents to India, where they were handed over to the plaintiffs in exchange for a trust receipt, the plaintiffs becoming responsible to the Bank for any short fall in the advances made to *B*. On 12th February 1907 M. & Co. contracted to purchase from L. & Co. 250 boxes of tin plates delivery to be F. O. B. Newport in four or five weeks after date On 26th February M. & Co. wrote to L & Co. enclosing instructions and marks for shipment of the 250 boxes to Bombay, and on 2nd March requested them to forward the goods to W. & Co. at Newport in time for shipment in S.S "Clan Macleod" for Bombay. On 21st March L. & Co. enclosed to M. & Co an invoice for 200 boxes and on 27th March another invoice for the remaining 50 boxes, the material part of the invoice in each case being "No claim concerning these goods can be recognized unless made within fifteen days from delivery to Messrs. W. & Co., Newport, for shipment on your account." The 250 boxes were put on board the steamer by W. & Co. as the agents of L. & Co., but in obtaining a bill of lading for 500 boxes (including the 250 in question) W. & Co. acted as the agents of M & Co. The steamer left Newport on 4th April. Following the usual course

SALE OF GOODS ACT (56 & 57 VIC., C. 71)—*concld.*

——— ss. 45 and 47—*concld.*

of business as above described, M. & Co. handed over to *B* the shipping documents relating to the 500 boxes and obtained an advance of £255-5-2 (being 65 per cent. of the invoice value). *B*, on the 6th April, obtained a similar advance from the Bank. On the same day M. & Co. suspended payment, and on 9th April L. & Co., as unpaid vendors of 250 boxes, notified the steamship owners, the first defendants, to stop these goods in transit. The S.S. "Clan Macleod" arrived in Bombay on 13th May, and the bill of lading which had been duly handed over by the Bank to the plaintiff on 29th April, was in due course presented by the latter. They were informed, however, of the stop put on the 250 boxes and were offered a delivery order for the remaining 250 alone. This they declined, refusing to accept anything but the full payment of the advance or the full amount of the goods On 29th June the plaintiffs repaid the Bank the amount of the advance, and the trust receipt of 29th April was duly cancelled. On the plaintiffs subsequently suing the steamship owners and their agents for damages: *Held*, that the transit did not cease at Newport, and L. & Co. were entitled to stop the goods after they had started for Bombay. *Ex parte Golding Davis & Co., 13 Ch. D. 628,* followed. *Held*, further, that the plaintiffs were, after 29th June,—on which date they had fulfilled their obligations to the Bank,—pledgees for value of the bill of lading, if indeed they did not occupy that position from 29th April, being transferees of the Bank's rights in respect of the advance as against the defendants. *Held*, further, that the plaintiffs were entitled to join both defendants in the suit. The utmost benefit which the defendants were entitled to obtain from the position of L. & Co. as sureties [Sc. to the plaintiffs for the advance made by the latter to M & Co.] was the right to the security of the 250 boxes which they were willing from the outset, should be received by the plaintiffs. .... The plaintiffs by refusing to take delivery of the 250 boxes had omitted to do an act which their duty to the surety required them to do, and to the extent to which that omission had resulted in loss the surety was discharged. *In re Westzinthus, 5 B. & Ad. 817,* discussed. BAPUJI SORABJI *v.* THE CLAN LINE STEAMERS, LD. (1910) . **I. L. R. 34 Bom. 640**

SALE-PRICE.

See PRE-EMPTION . **14 C. W. N. 295**

SALE-PROCEEDS.

——— surplus of—

See MORTGAGE . **I. L. R. 37 Calc. 907**

——— surplus sale-proceeds in the hands of Collector, attachment of—

See MORTGAGE . **14 C. W. N. 484**

SAME TRANSACTION.

See JURY, RIGHT OF TRIAL BY.
I. L. R. 37 Calc. 467

SANAD.

——— **construction of—**

See PENSIONS ACT (XXIII OF 1871), S. 6 . . . **I. L. R. 32 All. 148**

SANCTION FOR PROSECUTION.

See CRIMINAL PROCEDURE CODE, 1898, S. 195 . . **I. L. R. 34 Bom. 316**

See CRIMINAL PROCEDURE CODE, 1898, S 195, CLS. (1) (c) AND (3)
I. L. R. 32 All. 74

See CRIMINAL PROCEDURE CODE, 1898, SS. 195, 478 . **I. L. R. 34 Bom. 88**

See FALSE INFORMATION
14 C. W. N. 765

See REVISIONAL JURISDICTION OVER PRESIDENCY SMALL CAUSE COURT.
I. L. R. 37 Calc. 714

1. WHERE SANCTION IS NECESSARY.

——— *Criminal Procedure Code, s. 195 (c)—Forgery—Sanction for prosecution, want of, effect of.* On the prosecution of the accused for an offence under s. 467, Indian Penal Code, alleged to have been committed in respect of a document which was subsequently produced at the hearing of a suit tried on the Original Side of the High Court in which the accused was a party: *Held*, that the prosecution was incompetent without the previous sanction of the Court which tried the suit or of the Court to which it was subordinate. That s. 463, Indian Penal Code, referred to in s 195 (c) of the Criminal Procedure Code covers forgery of the description for which penalty is provided under s. 467, Indian Penal Code. TENI SHAH *v.* BOLAHI SHAH (1909) . . **14 C. W. N. 479**

2. DISCRETION IN GRANTING SANCTION.

1. ——— Contradictory statements— *False statement before the Committing Magistrate retracted, and true evidence given, at the trial—Prosecution of Witness for contradictory statements—Consideration of circumstances under which false evidence was given and repudiated—Criminal Procedure Code (Act V of 1898), s. 195* It would be dangerous to hold that the mere fact of contradictory statements having been made by a witness would justify the Court in granting sanction to prosecute him for giving false evidence. It is necessary to consider the circumstances under which they were made and repudiated. Where a witness was arrested and, after pointing out the spot where the stolen property was concealed, as alleged, by one of the accused was released, but stayed with the police and was examined the next day in Court, before the date fixed for the hearing of the case, the question having been put by a police officer in violation of s. 495 of the Criminal Procedure Code, and the evidence so given was false and was retracted at the trial, when he gave true evidence, alleging that he had been tutored and threatened by the same officer before his deposition in the lower Court: *Held*, that having regard to the events leading up to the examination before the Committing Magistrate, the conditions under which it was conducted, and the fact that the witness did not persist in his false statements, but gave true evidence at the trial, sanction should not be granted. EMPEROR *v.* TRIPURA SHANKAR SARKAR (1910)
I. L. R. 37 Calc. 618

2. ——— Procedure— *Criminal Procedure Code, s. 195—Court if bound to take evidence.* In disposing of the application for sanction to prosecute for bringing a false suit under s. 195 of the Criminal Procedure Code the Court has to decide whether the original suit was false, and whether, if it was false, sanction should be granted, and must make a full enquiry into the matter even if it involves trying the case *de novo*. So where there was no evidence in the records of the original case to prove that it was false, and the Small Cause Court refused sanction on the ground that it was not bound to go beyond the record, the Court ordered the case to be sent back and tried according to law. RAMDHIN BANIA *v.* SEWBALAK SINGH (1910) . . . . **I. L. R. 37 Calc. 714**
s.c. 14 C. W. N. 806

3. ——— False information to Police *—Criminal Procedure Code (Act V of 1898), ss. 195 (b), 476* No sanction should be granted or prosecution directed, unless there is a reasonable probability of conviction, though the authority granting a sanction under s. 195, or taking action under s. 476, should not decide the question of guilt or innocence. Great care and caution are required before the Criminal law is set in motion, and there must be a reasonable foundation for the charge in respect of which a prosecution is sanctioned or directed. *Ishri Parsad* v. *Sham Lal, I. L. R. 7 All 871; Kali Charan Lal* v. *Basudeo Narain Singh, 12 C W. N. 3;* and *Queen* v. *Bajoo Lal, I. L. R. 1 Calc. 450*, referred to. Where there had been prolonged litigation between the petitioner and the opposite party, in which the former had been successful, so that the case was by no means improbable, and two Magistrates had, in the course of the judicial investigations preceding the trial, accepted the prosecution story as substantially

SANCTION FOR PROSECUTION—*concld.*

2. DISCRETION IN GRANTING SANCTION—*concld.*

true, and the Assessors had only found the case not proved: *Held*, that, under the circumstances, it was not a proper case for a prosecution under s. 476 of the Code. JADU NANDAN SINGH *v.* EMPEROR (1909) . . **I. L. R. 37 Calc. 250**

4. ——— **Disobedience of order**—*Penal Code, s. 188—Disobedience of order under s. 144 of the Code of Criminal Procedure (Act V of 1898)—Sanction to prosecute, essentials for granting.* A Magistrate should not sanction a prosecution under s. 188, Penal Code, unless he thinks that all the elements necessary for a conviction are present. Where the order sanctioning a prosecution under s 188, Penal Code, for an alleged disobedience of an order under s. 144, Criminal Procedure Code, did not show that the disobedience caused or tended to cause obstruction, annoyance or injury or a riot, the High Court set it aside in revision. PROJAPAT JHA *v.* THE EMPEROR (1909)

14 C. W. N. 234

3. JURISDICTION.

——— **Jurisdiction of High Court and District Court**—*District Judge—Criminal Procedure Code (Act V of 1898), ss. 195 (1), cl. (b) and 476—Revision—Civil Procedure Code (Act V of 1908), s. 115.* Neither the High Court nor the District Judge has power, under s. 476 of the Criminal Procedure Code, to direct a prosecution for an offence committed before a Provincial Small Cause Court. *Begu Singh* v. *Emperor, I. L. R. 34 Calc. 551*, referred to. The High Court itself is precluded from granting sanction in such a case under s. 195, sub-s. (*1*), cl. (*b*) of the Criminal Procedure Code, as a Provincial Small Cause Court is not subordinate to it within sub-s. (*7*), cl. (*c*), nor can it interfere under sub-s. (*6*) with an order of a District Judge revoking a sanction granted by such Small Cause Court. *Hamiruddi Mondal* v. *Damodar Ghose, 10 C. W. N. 1026, Girija Sankar Roy* v *Binode Sheikh, 5 C. L. J. 222*, and *Muthuswami Mudali* v. *Veeni Chetti, I. L. R. 30 Mad. 382*, referred to. Where the District Judge revoked a sanction granted by a Subordinate Court to a District Magistrate on the ground that 'a sanction could not be granted to a third party,' and initiated proceedings under s. 476 of the Criminal Procedure Code: *Held*, that he acted illegally in the exercise of his jurisdiction, and that the High Court had power to set aside his order under s. 115 of the Code of Civil Procedure (Act V of 1908). *Hamiruddi Mondal* v. *Damodar Ghose, 10 C. W. N. 1026*, distinguished. *In re* RAM PRASAD MALLA (1909) . **I. L. R. 37 Calc. 13**

SANCTION TO SELL.

See MAHOMEDAN LAW—WAKF.

I. L. R. 37 Calc. 870

SANYASI.

——— **property left by—**

See HINDU LAW, SUCCESSION.

14 C. W. N. 191

SARANJAM.

See REVENUE JURISDICTION ACT, S 4, SUB-S. (*a*) . **I. L. R. 34 Bom. 232**

——— **Inam rights**—*Miras (permanent tenancy)—Denial of Saranjamdar's title—Attornment to successive Saranjamdars—Estoppel—Claim to hold as Mirasi tenant—Limited interest—Adverse possession* In an ejectment suit brought by an inamdar against persons claiming to hold as mirasi or permanent tenants, it was conceded that the inam rights in the land in suit appertained to a saranjam held on political tenure and that the present incumbent of the saranjam was the plaintiff. The defendants resisted the plaintiff's claim to eject them on the ground that the inam rights were merely the right to receive the royal share of the revenue and that the proprietary rights in the soil were, prior to the date of the grant, vested in the grantee of the inam, had descended to his heirs independently of the inam and furnished the lease hold or mirasi right. *Held*, that the defendants' contention involved the denial of the title to the reversionary rights in the lands in the defendants' occupation of the successive saranjamdars approved by Government. The defendants had, however, been continuously paying rent for their holding to the successive saranjamdars including the plaintiff. They were thus estopped by attornment from disputing the plaintiff's title. *Vasudev Daji* v. *Babaji Ranu, 8 Bom H. C. R. (A. C.) 175*, and *Doe dem. Marlow* v. *Wiggins, 4 Q. B. 367*, referred to. The rights of successive holders of hereditary and impartible estates not governed by the ordinary rules of inheritance but subject to the condition that Government shall approve of the heir may be barred by adverse possession *Tekait Ram Chunder Singh* v. *Srimati Madho Kumari, L. R 12 I. A 197*, referred to. Where in an ejectment suit by an inamdar it was shown that the defendants, for more than twelve years before the suit, openly asserted their claim to hold as permanent mirasi tenants: *Held*, that the defendants had acquired a title to the limited interest claimed by them and could not be ejected. TRIMBAK RAMCHANDRA *v.* SHEKH GULAM ZILANI (1909)

I. L. R. 34 Bom. 329

SARBARAKARI LEASE.

See LANDLORD AND TENANT.

14 C. W. N. 389

SCANDALOUS MATTER.

See AFFIDAVIT . . **14 C. W. N. 153**

SEBAIT.

——— **indemnity to estate of—**

See PARTIES . **I. L. R. 37 Calc. 229**

SECOND APPEAL.

See CIVIL PROCEDURE CODE, 1908, SS. 14, 151, O. XLVII, R. 1.
I. L. R. 32 All. 71

SECOND MORTGAGEE.

——— **claim of—**

See MORTGAGE **I. L. R. 37 Calc. 907**

SECRETARY OF STATE FOR INDIA.

——— **if necessary party—**

See PUBLIC DEMANDS RECOVERY ACT (BENG. I OF 1895) . **14 C. W. N. 606**

SECRET SOCIETY.

See JURY, RIGHT OF TRIAL BY.
I. L. R. 37 Calc. 467

SECURITIES ACT (XIII OF 1886).

———**ss. 3, sub-s. (2),6, sub-s. (1), cl. (*f*)—**

See RECEIVER . **I. L. R. 37 Calc. 754**

SECURITY.

See PRIVY COUNCIL . **14 C. W. N. 420**

SECURITY FOR GOOD BEHAVIOUR.

See CRIMINAL PROCEDURE CODE, S 110.
I. L. R. 32 All. 55

——— **Joint inquiry against members of a gang**—*Admissibility of evidence of association with a gang and of acts by the members thereof—Inquiry into the fitness of Sureties—Rejection on the report of a subordinate Magistrate or police officer—Order of Judge on reference, contents of—Criminal Procedure Code (Act V of 1898), ss. 117 (4), 122, 123 (3), 367, 424—Evidence Act (I of 1872), s. 11.* An order under s. 123 (3) of the Criminal Procedure Code should show on the face of it that the Sessions Judge has considered the case of each accused on its own merits and separately from that of the others even if such order need not contain all the details required by s. 367. *Jamait Mullick* v. *Emperor, I. L. R 35 Calc. 138*, referred to. A joint inquiry under s. 117 of the Criminal Procedure Code against the members of a gang formed for the purpose of habitually cheating in concert, is not illegal under sub-s. (4), though they were not all concerned together in each of the various acts alleged against them. When the question is whether a person is a habitual cheat, the fact that he belonged to an organization formed for the purpose of habitually cheating in concert is relevant under s. 11 of the Evidence Act, and it is open to the prosecution to prove against each person that the members of the gang do cheat. A surety cannot be called upon to state in writing what influence he has over the accused, nor can a Magistrate refuse to accept him on his failure to do so. *Per* RYVES *J.* (COXE, *J*, *contra*). Under s. 122 of the Criminal Procedure Code the Magistrate passing an order for security should himself hold the inquiry into the fitness of the proposed sureties, and he cannot decide the matter merely on the report of a subordinate Magistrate or of a police officer, which is not legal evidence *Queen-Empress* v. *Prithi Pal Singh, (1898) All. W. N. 154, Emperor* v. *Tota, I. L. R. 25 All 272, Emperor* v *Balwant, I. L. R. 27 All. 293, Re Abdul Khan, 10 C. W. N. 1027*, and *Suresh Chundra Basu* v. *Emperor, 3 C. L. J. 575*, followed. KALU MIRZA *v.* EMPEROR (1909)
I. L. R. 37 Calc. 91

SECURITY FOR GOOD BEHAVIOUR— *concld.*

SECURITY TO KEEP THE PEACE.

See CRIMINAL PROCEDURE CODE, S. 107.
I. L. R. 32 All. 571

See CRIMINAL PROCEDURE CODE, SS 526, 107, 117, 118 **I. L. R. 32 All. 642**

SEDITION.

See HIGH COURT **I. L. R. 34 Bom. 378**

See PENAL CODE, SS 107-124A
I. L. R. 34 Bom. 394

See PENAL CODE, SS. 124A, 511.
I. L. R. 34 Bom. 378

——— **Attempt to publish sedition—** *Penal Code (Act XLV of 1860), ss 511, 124A.* Under the Indian Penal Code (Act XLV of 1860) all that is necessary to constitute an attempt to commit an offence is some external act, something tangible and ostensible of which the law can take hold as an act showing progress towards the actual commission of the offence. It does not matter that the progress was interrupted. An attempt to publish sedition is complete as soon as the accused knowingly sells a copy containing the seditious article. It is none the less an attempt because something external to himself happens which prevents a perusal of the article by the buyers or any other member of the public. In cases of sedition, the question of intention is one of fact. EMPEROR *v.* GANESHI BALVANT MODAK (1909)
I. L. R. 34 Bom. 378

SELF-ACQUIRED PROPERTY.

See HINDU LAW—JOINT FAMILY
I. L. R. 32 All. 415

See HINDU LAW—PARTITION.
I. L. R. 34 Bom. 106

See HINDU LAW—SELF ACQUISITION.
I. L. R. 32 All. 305

SERVIENT OWNER.

See EASEMENT . . **14 C. W. N. 15**

SESSIONS JUDGE.

———**power of, to grant bail—**

See BAIL . . **I. L. R. 37 Calc. 439**

SET-OFF.

See CIVIL PROCEDURE CODE, 1882, S 111.
14 C. W. N. 170; 786

SETTING ASIDE SALE.

See EX PARTE DECREE.
14 C. W. N. 182

SETTLEMENT.

See ASSAM LAND AND REVENUE REGULATION, S 6 . . **14 C. W. N. 990**

SETTLEMENT COURT.

——— **order of, relating to attached lands—**

See DISPUTE CONCERNING LAND.
I. L. R. 37 Calc. 331

SETTLEMENT OFFICER.

——— **enquiry by—**

See "JUDICIAL PROCEEDING"
I. L. R. 37 Calc. 52

SHERIFF'S RIGHT TO POUNDAGE.

See POUNDAGE . **I. L. R. 37 Calc. 649**

SHETSANADI LANDS.

——— *Rules framed under Act XI of 1852 (Bombay)—Government continuing the shetsanadi lands to the family of the shetsanadi who is discharged by Government without any fault on his part—Continuance on condition of paying full survey assessment on the lands—Subsequent resumption of the lands by Government.* On the death in 1865 of the then *shetsanadi*, one *B*, Government appointed one *Y* as the new *shetsanadi*; but under the rules framed under Bombay Act XI of 1852, Government continued the *shetsanadi* lands to the family of *B* on condition of their paying full survey assessment on the lands The remuneration of *Y* was made payable out of the extra assessment recovered in 1905 Government resumed the lands and handed them over to *Y* for his services. *Held*, that both the order passed in 1865 and the action taken under the rule framed under Bombay Act XI of 1852 had in law the effect of converting the land from a *shetsanadi vatan* into a *rayatwari* holding and investing the holder of the land with the rights of an ordinary occupant, entitled to it, so long as he paid the survey assessment. *Held*, also, that the proceedings of 1905 were on the supposition that what was done in 1865 on *B*'s death had the effect of continuing the lands in dispute as one reserved for *shetsanadi* service; but that was not its effect, and the proceedings in question were *ultra vires*. YELLAPPA *v.* MARLINGAPPA (1910) . **I. L. R. 34 Bom. 560**

SHORT DELIVERY.

See RAILWAYS ACT, s. 140.
14 C. W. N. 888

SHUDRAS.

See HINDU LAW—INHERITANCE
I. L. R. 34 Bom. 321, 553

SIR LAND.

See AGRA TENANCY ACT (II OF 1901), SS 19 AND 20 . **I. L. R. 32 All. 383**

SMALL CAUSE COURT.

See PROVINCIAL SMALL CAUSE COURTS ACT, 1887 . **I. L. R. 34 Bom. 171**

——— **Jurisdiction**—*Suit by mortgagor against mortgagee for mesne profits.* A suit by a mortgagor against the mortgagee for mesne profits for the period during which he held wrongful possession of the property is maintainable in a Small Cause Court. Art. 31 of Sch II of the Provincial Small Cause Courts Act is no bar to such suit being instituted in a Small Cause Court SAHARI DUTT *v.* SHEIKH AINUDDY (1910) . **14 C. W. N. 1001**

SMALL CAUSE COURT DECREE.

See CIVIL PROCEDURE CODE, 1908, S. 151.
I. L. R. 34 Bom. 135

SOLEHNAMA (UNREGISTERED).

See LEASE . **I. L. R. 37 Calc. 808**

SOLICITOR'S LIEN FOR COSTS.

——— *Practice—Dissolution of partnership—Assets in hands of receiver—Judgment-creditor—Charging order—Solicitors' lien for costs.* The rule at common law that a solicitor is entitled to a lien for his costs on property recovered or preserved by his exertions has always been followed by this Court; and, where there are assets of a partnership in the hands of a receiver appointed in a partnership suit, the solicitors engaged in that suit are entitled to ask for a charge on those assets in priority to the creditors of the partnership. *Rida* v. *Thorne*, [*1902*] *2. Ch 344*, followed. Where a plaintiff has obtained a decree against a partnership firm, the available assets of which are in the hands of a receiver appointed in a previous partnership suit, his proper course is not to issue execution against those assets, but to ask the Court for a charging order, and to undertake to deal with the charge according to the order of the Court *Keuney* v *Attrill*, *34 Ch. D. 345*, followed. A. HAJI ISMAIL AND CO. *v* RABIABAI (1909)
I. L. R. 34 Bom. 484

SPECIAL BENCH.

——— **power of—**

See PARDON . **I. L. R. 37 Calc. 845**

SPECIAL PROCEDURE.

See BAIL . **I. L. R 37 Calc. 439**

SPECIFIC AREA.

See LEASE . **I. L. R. 37 Calc. 293**

SPECIFIC PERFORMANCE.

——— **Agreement to lease**—*Specific performance, suit for—Registration, if necessary—Indian Registration Act (III of 1877), ss. 3, 17* (d) *and 49—Transfer of Property Act (IV of 1882), s. 54—Present demise—Interest in land.* Unless an agreement to lease certain premises operate as a present demise, it does not, of itself, create any interest in or charge on the property agreed to be demised and can, therefore, be given

SPECIFIC PERFORMANCE—*concld*

in evidence for the purpose of enforcing specific performance of it, without its having been registered under the provisions of the Indian Registration Act *Purmanandas* v. *Dharsey, I. L. R. 10 Bom. 101*, not followed. *Konduri Srinivasa* v. *Gottumukkala Venkatanaja, 17 Mad L J 218*, followed An unregistered agreement to lease provided for the grant of lease for a period of five years commencing from the day following the day on which the agreement was entered into and also provided that the proposed lessee would get a proper *kabuliyat* granted to him to be registered at his own cost: *Held*, that on the day the agreement was come to, there was no present demise, and, therefore, the agreement could be adduced in evidence for the enforcement of specific performance thereof. SATYENDRA NATH BOSE *v* ANIL CHANDRA GHOSH (1908) . . . . **14 C. W. N. 65**

SPECIFIC PERFORMANCE OF CONTRACT.

See CHOWKIDARI CHAKRAN LANDS.
I. L. R. 37 Calc. 57

SPECIFIC RELIEF ACT (I OF 1877).

1. ——— s. 9—Decree against landlord for khas possession—*Ouster of tenants in execution—Tenant's remedy—Civil Procedure Code (Act XIV of 1882), s. 332.* Where in execution of a decree for *khas* possession obtained against the landlord, the plaintiffs who were tenants were dispossessed: *Held*, that the plaintiffs were not dispossessed otherwise than in due course of law within the meaning of s 9 of the Specific Relief Act KAMINI SUNDARI DASSYA *v.* SABED SHEIKH (1909) . . . . **14 C. W. N. 403**

2. ——— ss. 9, 42—Temple lands, possession of—*Trustee of temple—Wrongful dismissal and dispossession by co-trustees—Suit for declaration, invalidity of dismissal and injunction—Consequential relief—No claim to recover possession—Suit so framed not maintainable—Landlord—Possession by receipt of rent—Dispossession—Interest capable of delivery and possession.* When *A*, the trustee of a temple who had been ousted from possession by his co-trustees, sued for a declaration that his dismissal from the trusteeship was invalid and for an injunction restraining his co-trustees and the temple committee from interfering with the exercise of his rights as trustee, there being no prayer for consequential relief in the nature of possession against his co-trustees. *Held*, that the suit was not maintainable. That the suit is brought by a trustee is no answer to the objection. That possession should have been used for and not a mere declaration. An injunction is a discretionary relief and cannot be claimed by a plaintiff out of possession when he does not ask for possession against defendants who are actually in possession: *Kunj Bihari* v. *Keshavlal Hiralal, I. L. R. 28 Bom. 567*, dissented from. *Jagadindra Nath Roy* v. *Hemanta Kumari Debi, I. L. R. 32 Calc. 129*, referred to: *Held*, further, that notwithstanding the lands belonging to the temple were in the physical possession of tenants, yet the plaintiff's right to receive rents was capable of possession which if disturbed entitled him to bring a suit for possession under s. 9, Specific Relief Act. *Jagannatha Charry* v. *Rama Rayer, I. L. R. 28 Mad. 238*, followed. *Abdul Kadir* v. *Mahomed, I. L. R. 15 Mad. 15* followed. *Narayana* v. *Shankunni, I L. R 15 Mad. 255*, followed RATHNASABAPATHI PILLAI *v.* RAMASAMI AIYAR (1910)
I. L. R. 33 Mad. 452

SPECIFIC RELIEF ACT (I OF 1877)—*contd.*

——— **s. 9**—*concld.*

——— **ss. 14 to 17—Contract entered into by person on his behalf and on behalf of minors**—*Form of decree in suit for specific performance of such contract, when contract found not to be binding on minors.* Where a contract of sale entered into by a person on his own behalf and on behalf of minors is found not binding on the minors, no decree for specific performance can be passed against the interest of such minors in the properties. Ss. 14 to 16 of the Specific Relief Act do not enable such contract to be separated as regards the adult person who entered into the contract; and s. 17 of the Act precludes the passing of a decree against the share of such party alone or a decree for the whole against such person. The purchaser in such a case will be entitled, on offering to pay the whole purchase money, to a decree directing the adult party to convey all his interest in the properties PORAKA SUBBARAMI REDDY *v.* VADLAMUDI SESHACHALAM CHETTY (1909) . . **I. L. R. 33 Mad. 359**

——— **s. 21** (*e*).

See COMPROMISE . **14 C. W. N. 451**

1. ——— s. 42—*Mahomedan Law—Waqf—Right of Muhammadans entitled to use such property to sue for a declaration that property is waqf.* The plaintiffs, Mahomedan residents in the city of Kanauj, sued for a declaration that a certain *idgah* and the land adjoining it situated in a village in pargana Kanauj was waqf property. *Held*, that as Mahomedans who had a right to use the *idgah* they were entitled to sue and that no special permission was required to enable them to do so. *Zafaryab Ali* v. *Balkhauar Singh, I. L. R. 5 All. 497*, and *Jawahra* v. *Akbar Husain, I. L. R. 7 All 178*, followed *Wajid Ali Shah* v. *Dianatullah Beg, I. L. R. 8 All. 31*, distinguished. MUHAMMAD ALAM *v.* AKBAR HUSAIN (1910)
I. L. R. 32 All. 631

2. ——— *Civil Procedure Code (Act VIII of 1859), s 15—15 and 16 Vic., c 86, s. 50—Suit by plaintiff for mere declaration that the minor defendant was not his son—Investigation of claim without delay.* A Talukdar-plaintiff brought a suit for a declaration that defendant 2, a minor, was not his son and that he was not born to the plaintiff's wife, defendant 1, and for an injunction restraining defendant 1 from proclaim-

SPECIFIC RELIEF ACT (I OF 1877)— *contd.*

——— s. 42—*concld.*

ing to the world that defendant 2 was plaintiff's son and from claiming maintenance for him as such son. The defendants contended that the suit was not maintainable under the provisions of the Specific Relief Act (I of 1877) and that it was premature. *Held*, that the suit was maintainable, it being within the provisions of s 42 of the Specific Relief Act (I of 1877). *Held*, further, that in the interests of justice it was of the highest importance that such claims should be investigated and decided without unnecessary delay, and when the controversy had once been brought to trial the decision should ordinarily follow the usual course *Yool* v. *Ewing, Ir. Rep. 1 Ch. 434*, distinguished. BAI SHRI VAKTUBA *v.* THAKORE AGARSINGHJI RAISINGHJI (1910) . . . **I. L. R. 34 Bom. 676**

3. ——— ——— *Rent-decrees obtained by Defendant against Plaintiffs' tenants if amounts to dispossession—Throwing cloud on title—Declaratory suit, proper remedy.* Where the plaintiff sued for declaration of title to certain lands alleging that the same were in possession of his tenants, but that the defendant had thrown a cloud on his title by recovering rent-decrees against some of the tenants: *Held*, that the plaintiff could not in this suit ask for any further relief than a mere declaration of title, and was proceeding in the right manner in suing for declaration of the title only. *Loke Nath Surma* v. *Keshab Ram Doss, I. L. R. 13 Calc. 147; Chinnammal* v. *Varadrajulu, I L. R. 15 Mad 307; Nirmal Chandra* v. *Mahomed Siddik, I. L. R. 26 Calc. 11*, relied on SATISH CHANDRA BHUTTACHARYA *v* SATYA CHURAN MAJUMDAR (1910) . . . . . **14 C. W. N. 576**

4. ——— *Suit for declaration of abstract right—Cause of action—Act No. VII of 1889 (Succession Certificate Act), s. 8* A Hindu widow applied for a succession certificate to enable her to collect the debts of her deceased husband consisting mainly of a sum ₹4,000 odd on fixed deposit with a bank. Objections being raised by the next reversioners, an order was passed enabling the applicant only to draw the interest accruing due from time to time on this deposit. The applicant then brought a suit for a declaration that she was entitled to the whole sum of money. *Held*, that the suit was maintainable, the limitation upon her power to get in the money having been imposed at the instance of the reversioners. KESHO RAM SINGH *v.* RAM KUAR (1910) **I. L. R. 32 All. 316**

——— **s. 45**—*General principle underlying interference by High Court—Municipal election petition—Jurisdiction and discretion of Chief Judge of Small Causes Court—City of Bombay Municipal Act (Bom. Act III of 1888 as amended by Bom. Act V of 1905), ss 33 and 34.* A Municipal election petition having been lodged with the Chief Judge of the Small Causes Court, the latter unseated two of the successful candidates and found cause of objection against the candidate in whose favour were recorded "the next highest number of valid votes after those returned as elected." He declined to inquire further into the claims of any other candidate or to declare any other candidate elected, as, on his interpretation of s. 33 (*2*) of the Bombay Municipal Act (Bom. Act III of 1888 as amended by Bom. Act V of 1905), he was not able to do so. The two highest of the other unsuccessful candidates thereupon obtained rules against the Chief Judge under s. 45 of the Specific Relief Act (I of 1877), to show cause why he should not proceed to declare them elected under s. 35 (*2*) above mentioned *Held*, that the case fell within the general principle referred to in *Ex parte Milner, (1851) 15 Jur 1037*, that where an inferior tribunal improperly refused to enter upon a complaint, a mandamus would issue. S 33 having been held to empower the Chief Judge to set aside the election of any number of candidates returned as elected, there was nothing repugnant in construing the section as empowering the Chief Judge to fill up any number of vacancies so created from the list of unsuccessful candidates subject to the provisions of the section. It was clearly incumbent on the Chief Judge to deal with the question of filling up both the vacancies. He should accordingly proceed to place the unsuccessful candidates in order of valid votes. The two with the highest number of valid votes against whom no cause of objection was found should be declared to be deemed to be elected. If only one qualified, or none qualified, proceedings for filling the vacancy or vacancies would have to be taken under s. 34. An application under s 33 (*1*) should name the persons whose election is objected to. *In the matter of the* SPECIFIC RELIEF ACT, and *In the matter of* SARAFALLY MAMOOJI AND JAFFER JUSUB (1910) **I. L. R. 34 Bom. 659**

SPECIFIC RELIEF ACT (I OF 1877)— *concld.*

——— s. 45—*concld*

——— **ss. 54, 56 (*e*).**

See INJUNCTION.
I. L. R. 37 Calc. 731

SPECULATIVE PURCHASER.

See CERTIFICATE OF SALE.
I. L. R. 37 Calc. 107

SRADH.

——— **offerings to the dead at—**

See HINDU LAW—GIFT.
14 C. W. N. 1005

STAMP ACT (II OF 1899).

——— **s. 2 (23), Sch. I, Art. 53.**

See STAMP-DUTY.
I. L. R. 37 Calc. 629; 634

——— **s. 5**—*Stamp-duty—Lease—Multifarious document—One lease with several parties concurring to it—Stamp Act (II of 1899), ss. 5, 28, (3) 35, 57* (1). The concurrence of several

STAMP ACT (II OF 1899)—*contd.*

——— **s. 5**—*concld.*

parties to one and the same lease does not make it a multifarious document within the meaning of s. 5 of the Stamp Act. The stamp-duty on such a lease is the same as on a conveyance for a consideration equal to the amount or value of the fine or premium for which the lease is granted. *In re* PARASEA COLLIERIES, LTD. (1910)
I. L. R. 37 Calc. 629

——— **ss. 5, 28 (3), 35, 57 (1).**

See STAMP-DUTY.
I. L. R. 37 Calc. 629

——— **ss. 27, 64** (*a*)—*Execution of document—Not containing statement of facts affecting duty—Stamp.* Certain property was sold for ₹20,000 to one R who paid ₹1,000 in cash and agreed to give the vendors credit for ₹19,000 to be drawn against as required. Shortly afterwards the parties agreed to rescind the contract and *R* re-sold the property to his vendors, giving them a conveyance in which the consideration was stated to be ₹1,000 in cash, no mention being made of the extinction of his liability to pay the remaining ₹19,000. *Held*, on these facts, that *R* had committed an offence within the purview of s. 64 (*a*) of the Indian Stamp Act, 1899 EMPEROR *v.* RAMESHAR DAS (1910) . **I. L. R. 32 All. 171**

——— **s. 52**—*Partition decree—Court-fee stamp erroneously used for non-judicial—Valuation of decree by filing of non-judicial stamp on appeal—Civil Procedure Code (Act V of 1908), s. 151.* The plaintiff in a suit for partition by mistake filed a Court-fee instead of a non-judicial stamp in order that a decree might be drawn up thereon in accordance with Art. 45 of Sch. I of the Stamp Act, and the mistake was not discovered till after some of the defendants had preferred an appeal against the decree so drawn up and others had filed cross-objections, when the plaintiff having applied for execution of the decree, the Subordinate Judge dismissed the application holding that there was no valid decree capable of execution: *Held*, on plaintiff's application in the appeal, that the High Court could, in the exercise of its powers under s. 151 of the Civil Procedure Code, direct the plaintiff to file a non-judicial stamp of the requisite value in the appeal, so as to validate the decree with retrospective effect from the date when it was drawn up. *Chhayemannessa Bibi* v. *Basirar Rahaman, I. L. R. 37 Calc. 399: s.c. 11 C. L. J. 285*, referred to. The High Court in such a case cannot direct the refund by the revenue authorities of the value of the Court-fee stamp thus erroneously used. S. 52 of the Indian Stamp Act does not cover a case in which Court-fee stamp has been erroneously used where non-judicial stamp ought to have been used under the provisions of the Act. *Reference under s. 57 of Act II of 1899, I. L. R. 23 All. 213* referred to. SHAIKH RAFIUDDIN *v.* LATIF AHMED (1910)
14 C. W. N. 1101

STAMP ACT (II OF 1899)—*concld.*

——— **s. 62** (*1*) (*b*)—*Stamp—Award—Unstamped award signed by parties to submission—Party signing "otherwise than as a witness."* Where certain parties to an arbitration, who had signed the submission to arbitration, also signed the award, not as witnesses, but under the heading "signature of the heirs," and the award was not stamped: *Held*, that such parties did not fall within the purview of s. 62, cl. (1) (*b*), of the Indian Stamp Act, 1899, as persons "executing or signing otherwise than as witnesses" EMPEROR *v.* BRIJ PAL SARAN (1910) . **I. L. R. 32 All. 198**

STAMP DUTY.

See STAMP ACT, 1899

See STAMP ACT (II OF 1899), s. 62 (1) (*b*).
I. L. R. 32 All. 198

1. ——— **Acknowledgment**—*Money received by servant of a firm and handed over to fellow-servant—Consideration—Acknowledgment of receipt by fellow-servant of a sum larger than ₹20, if liable to stamp-duty—Stamp Act (II of 1899), s. 2 (23), Sch. I, Art. 53.* Where a sum exceeding ₹20 was received by an assistant in a mercantile firm from the cashier of the firm as advance made on the firm's behalf, and to be expended on the firm's behalf, and previous to disbursement of the sum in question a pay-order was made out by the Accounts Department of the firm and was sent to the cashier who had paid the sum to the assistant, and the assistant at the same time acknowledged receipt by signing his name or initials on the pay-order: *Held*, that the acknowledgment did not require a receipt-stamp by reason of the assistant's signature on the pay-order. *Attorney-General* v. *Carlton Bank*, [*1899*] *2 Q. B. 158*, distinguished. *In re* BURN & CO. (1910)
I. L. R. 37 Calc. 634

2. ——— — **Lease**—*Multifarious Document—One lease with several parties concurring to it—Stamp Act (II of 1899), ss. 5, 28 (3), 35, 57 (1).* The concurrence of several parties to one and the same lease does not make it a multifarious document with the meaning of s. 5 of the Stamp Act. The stamp-duty on such a lease is the same as on a conveyance for a consideration equal to the amount or value of the fine or premium for which the lease is granted. *In re* PARASEA COLLIERIES, LTD. (1910) . . . **I. L. R. 37 Calc. 629**

STAPLE FOOD, PRICE OF.

———"how ascertained—

See LANDLORD AND TENANT
I. L. R. 37 Calc. 742

STATEMENT IN WRITING BY ACCUSED.

——— **admissibility of—**

See CONFESSION . **I. L. R. 37 Calc. 735**

STATUTES, CONSTRUCTION OF.

See CITY OF BOMBAY MUNICIPAL ACT (BOMBAY ACT III OF 1888), s. 305.
I. L. R. 34 Bom. 593

STATUTES, CONSTRUCTION OF—*concld.*

See CIVIL PROCEDURE CODE, 1908, S. 48
I. L. R. 32 All. 499

See CONSTRUCTION OF STATUTES.

——————— *Bombay Land Revenue Code (Bom Act V of 1879), s. 48* The Bombay Land Revenue Code (Bom Act V of 1879) is a taxing enactment and must be construed strictly in favour of the subject SECRETARY OF STATE *v* LALDAS (1909) . . **I. L. R. 34 Bom. 239**

STATUTORY OBLIGATION.

——————— breach of—

See CONTRIBUTORY NEGLIGENCE
I. L. R. 34 Bom. 427

STEP-BROTHER.

See HINDU LAW—AYAUTUKA STRIDHAN
I. L. R. 37 Calc. 863

STEP IN AID OF EXECUTION.

See CIVIL PROCEDURE CODE, 1882, S 245
14 C. W. N. 481

See LIMITATION ACT, 1877, SCH II, ART. 179 . . **I. L. R. 34 Bom. 68**
14 C. W. N. 486

STEP-MOTHER.

See HINDU LAW—SUCCESSION.
I. L. R. 37 Calc. 214

STOPPAGE IN TRANSITU.

——————— *Ultimate destination of goods—Duration of transit—Pledgee of bill of lading—Measure of damages—Sale of Goods Act (56 and 57 Vic., c 71), ss. 45 and 47* The plaintiffs, a Bombay firm, imported hardware goods from M & Co of Manchester for sale on commission, the business being carried on and financed in the following manner M. & Co, on shipping the goods, handed over the complete shipping documents to *B*, and received from him an advance of 65 per cent. of the invoice price *B* then handed over the shipping documents to the National Bank of India in England, and himself received a similar advance by drawing on a credit opened with the Bank by the plaintiffs The Bank then forwarded the shipping documents to India, where they were handed over to the plaintiffs in exchange for a trust receipt, the plaintiffs becoming responsible to the Bank for any short fall in the advances made to *B* On 12th February 1907 M & Co contracted to purchase from L. & Co 250 boxes of tin plates, delivery to be F. O. B. Newport in four or five weeks after date. On 26th February M. & Co. wrote to L & Co. enclosing instructions and marks for shipment of the 250 boxes to Bombay, and on 2nd March requested them to forward the goods to W. & Co. at Newport in time for shipment in S.S "Clan Macleod" for Bombay. On 21st March L. & Co. enclosed to M. & Co. an invoice for 200 boxes, and on 27th March another invoice for the remaining 50 boxes, the material part of the invoice in each case being "No claim concerning these goods can be recognized unless made within fifteen days from delivery to Messrs W & Co., Newport, for shipment on your account" The 250 boxes were put on board the steamer by W. & Co. as the agents of L. & Co, but in obtaining a bill of lading for 500 boxes (including the 250 in question) W. & Co acted as the agents of M & Co The steamer left Newport on 4th April Following the usual course of business as above described, M & Co handed over to *B* the shipping documents relating to the 500 boxes and obtained an advance of £255-5-2 (being 65 per cent. of the invoice value). *B*, on the 6th April, obtained a similar advance from the Bank On the same day M. & Co. suspended payment, and on 9th April L & Co. as unpaid vendors of 250 boxes, notified the steamship owners, the first defendants, to stop these goods in transit The S S "Clan Macleod" arrived in Bombay on 12th May, and the bill of lading which had been duly handed over by the Bank to the plaintiff on 29th April, was in due course presented by the latter They were informed, however, of the stop put on the 250 boxes and were offered a delivery order for the remaining 250 alone. This they declined, refusing to accept anything but the full payment of the advance or the full amount of the goods On 29th June the plaintiffs repaid the Bank the amount of the advance, and the trust receipt of 29th April was duly cancelled On the plaintiffs subsequently suing the steamship owners and their agents for damages: *Held*, that the transit did not cease at Newport, and L. & Co were entitled to stop the goods after they had started for Bombay *Ex parte Golding Davis & Co, 13 Ch D. 628*, followed *Held*, further, that the plaintiffs were, after 29th June,—on which date they had fulfilled their obligations to the Bank,—pledgees for value of the bill of lading, if indeed they did not occupy that position from 29th April, being transferees of the Bank's rights in respect of the advance as against the defendants *Held*, further, that the plaintiffs were entitled to join both defendants in the suit The utmost benefit which the defendants were entitled to obtain from the position of L & Co. as sureties [sc to the plaintiffs for the advance made by the latter to M & Co] was the right to the security of the 250 boxes which they were willing from the outset should be received by the plaintiffs .....The plaintiffs by refusing to take delivery of the 250 boxes had omitted to do an act which their duty to the surety required them to do, and to the extent to which that omission had resulted in loss, the surety was discharged. *In re Westzinthus, 5 B & Ad 817*, discussed BAPUJI SORABJI *v.* THE CLAN LINE STEAMERS, LIMITED (1910)
I. L. R. 34 Bom. 640

STRIDHAN.

See DAUGHTERS . **I. L. R. 34 Bom. 510**

See HINDU LAW—STRIDHAN

See HINDU LAW—SUCCESSION
I. L. R. 34 Bom. 385

SUBROGATION.

See MORTGAGE
14 C. W. N. 1089 ; 1093 note

SUBSEQUENT PROSECUTION AFTER ACQUITTAL.

See ACQUITTAL **I. L. R. 37 Calc. 604**

SUBSTANTIAL LOSS.

See SALE FOR ARREARS OF REVENUE.
I. L. R. 37 Calc. 407

SUCCESSION.

See AGRA TENANCY ACT (II OF 1901), S 22
I. L. R. 32 All. 314

See HINDU LAW—AYAUTUKA STRIDHAN
I. L. R. 37 Calc. 863

See HINDU LAW—INHERITANCE.
I. L. R. 34 Bom. 321 ; 553

See HINDU LAW—JOINT FAMILY.
I. L. R. 32 All. 253

See HINDU LAW—SUCCESSION.

See OUDH ESTATES ACT (I OF 1869), SS 8 AND 22, SUB-S. (11).
I. L. R. 32 All. 599

SUCCESSION ACT (X OF 1865).

——— **ss. 82, 187—Will—Bequest to widow, how to be construed** S. 187 of the Succession Act does not debar a defendant from relying on a will in respect of which no Probate or Letters of Administration have been taken out, as he is not seeking to establish a right as executor or legatee. In a case to which the Hindu Wills Act applied, a testator made a bequest to his widow in the following terms : —"I give all the remaining properties of every sort which fell to my share to my wife Andalu Therefore, the aforesaid Andalu herself should enjoy all the remaining properties":—*Held*, on the construction of the will, that the widow took only a limited estate. The operation of the ordinary rule of Hindu Law that a bequest to a wife, without words creating an absolute estate, conferred only a limited interest, was excluded by s 82 of the Succession Act. The fact that the donee was a widow, the absence of words of inheritance, and of words conferring powers of alienation were not sufficient to show that she took only a restricted interest. These circumstances however, coupled with the recital in the will that she should "enjoy" the estate, indicated the intention of the testator that she should have no powers of alienation. CARALAPATHI CHUNNA CUNNIAH *v* COTA NAMMALWARIAH (1909) . **I. L. R. 33 Mad. 91**

——— **s. 187.**

See ADMINISTRATOR-GENERAL'S ACT, S. 36 . . **I. L. R. 34 Bom. 506**

See CERTIFICATE, ADMINISTRATOR-GENERAL'S . **I. L. R. 34 Bom. 506**

SUCCESSION ACT (X OF 1865)—*concld.*

See HINDU WILLS ACT.
I. L. R. 34 Bom. 506

See MAHOMEDAN LAW—PROBATE.
I. L. R. 37 Calc. 839

See PROBATE . **I. L. R. 34 Bom. 506**

See WILL . **I. L. R. 34 Bom. 506**

———*Hindu Wills Act (XXI of 1870), ss 2 and 5—Indian Succession Act (X of 1865), s 187—Administrator General's Act (II of 1874), s 36—Will made in Bombay—Property worth less than R1,000—Probate—Administrator-General's certificate.* A will made in Bombay is subject to the provisions of the Hindu Wills Act (XXI of 1870) and a person claiming as a legatee under the will is not entitled to sue without taking out probate as he would be bound by s. 187 of the Indian Succession Act (X of 1865) which is incorporated in the Hindu Wills Act (XXI of 1870). The provision of the Administrator-General's Act (II of 1874) is not affected by the incorporation in the Hindu Wills Act (XXI of 1870) of s. 187 of the Indian Succession Act (X of 1865) NARAYAN SHRIDHAR *v.* PANDURANG BAPUJI (1910)
I. L. R. 34 Bom. 506

——— **s. 190.**

See RECEIVER . **I. L. R. 37 Calc. 754**

——— **s. 250.**

See ADMINISTRATION ACT.
I. L. R. 34 Bom. 459

See CAVEATOR . **I. L. R. 34 Bom. 459**

See PROBATE . **I. L. R. 34 Bom. 459**

———*Probate and Administration Act (V of 1881), s. 81—Will—Probate—Caveator—Interest possessed by the caveator.* The provisions of s. 81 of the Probate and Administration Act, 1881 (which correspond with those of s. 250 of the Indian Succession Act, 1865), enact that the interest which entitles a person to put in a caveat must be an interest in the estate of the deceased person, that is, there should be no dispute whatever as to the title of the deceased to the estate, but that the person who wishes to come in as the caveator must show some interest in the estate derived from the deceased by inheritance or otherwise. *Abhiram Dass* v. *Gopal Dass, I. L. R 17 Calc 48*, followed PIROJSHAH BHIKAJI *v.* PESTONJI MERWANJI (1910) . . **I. L. R. 34 Bom. 459**

SUCCESSION (PROPERTY PROTECTION) ACT (XIX OF 1841).

See CURATOR'S ACT, 1841.

See RECEIVER . **I. L. R. 37 Calc. 754**

SUCCESSION CERTIFICATE.

See RECEIVER . **I. L. R. 37 Calc. 754**

——— **Possession of property by Receiver without Succession Certificate**—*Succession Certificate Act (VII of 1889), ss. 4, 8, cl (c)—Indian*

SUCCESSION CERTIFICATE—*concld.*

Securities Act (XIII of 1886) s. 3, sub-s. (2), s. 6, sub-s (1). In the absence of any provision in the Hindu Wills Act (XXI of 1870) and in the Probate and Administration Act (V of 1881) "that no right to the property of an intestate can be established unless administration had been previously granted by a competent Court," the Receiver appointed by Court is competent to take possession of the securities and moneys without a certificate under s. 4 of the Succession Certificate Act; but regard being had to the provisions of the Indian Securities Act, 1886, and s 3, sub-s. (2), s. 6, sub-s. (1), cl. (*f*), and s. 8, cl. (*c*) of the Succession Certificate Act (VII of 1889), a Succession Certificate would be needed if a suit was brought to establish a title to such funds by right of inheritance. HARIHAR MUKERJI *v.* HARENDRA NATH MUKERJI (1910) **I. L. R. 37 Calc. 754**

SUCCESSION CERTIFICATE ACT (VII OF 1889).

——— **ss. 4, 7**—*Certificate not to be given for collection of part only of a debt—Mahommedan Law—Dower. Held,* that no certificate could be granted to one of the heirs of a Mahommedan lady, who had died leaving a dower debt unrealized, for collection merely of a part of the dower debt of the deceased. *Muhammad Ali Khan* v. *Puttan Bibi, I. L. R. 19 All. 129,* followed *Akbar Khan* v. *Bilkisara Begam, All. W. N. (1911) 125,* referred to. BISMILLA BEGAM *v* TAWASSUL HUSAIN (1910) . . **I. L. R. 32 All. 335**

——— **ss. 4, 8, cl. (*c*).**

See RECEIVER . **I. L. R. 37 Calc. 754**

——— **s. 8.**

See SPECIFIC RELIEF ACT (I OF 1877), S. 42 . . **I. L. R. 32 All. 316**

SUCCESSOR.

——— **final order by—**

See "COURT," MEANING OF. **I. L. R. 37 Calc. 642**

SUDRAS.

See HINDU LAW—INHERITANCE **I. L. R. 34 Bom. 321, 553**

SUIT.

——— **abatement of—**

See CIVIL COURTS ACT, S 16. **I. L. R 33 Mad. 342**

See PRINCIPAL AND AGENT. **I. L. R. 33 Mad. 162**

——— **subject-matter of—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXXIII, RR 1, 2 AND 5. **I. L. R. 34 Bom. 638**

——— **to set aside adoption—**

See ADOPTION . **I. L. R. 37 Calc. 860**

SUIT—*concld.*

——— **valuation of—**

See BENGAL, N.-W. P. AND ASSAM CIVIL COURTS ACT (XII OF 1887), S. 21. **I. L. R. 32 All. 222**

SUIT IN FORMA PAUPERIS.

See PAUPER SUIT.

SUITS VALUATION ACT (VII OF 1887).

——— **s. 8.**

See JURISDICTION. **I. L. R. 34 Bom. 267**

——— **s. 11.**

See RESTITUTION OF CONJUGAL RIGHTS **I. L. R. 34 Bom. 236**

SUMMONS.

——— **service of—**

See FRAUD . . **I. L. R. 32 All. 145**

——— **non-service of—**

See RIGHT OF SUIT. **I. L. R. 37 Calc. 197**

SURETY.

See CRIMINAL PROCEDURE CODE (V OF 1898), S. 122 . **14 C. W. N. 709**

——— **fitness of—**

See SECURITY FOR GOOD BEHAVIOUR. **I. L. R. 37 Calc. 91; 446**

——— **Surety to Administration Bond—**

Right of surety to apply for cancellation of bond on administration being completed. A surety to an administration bond cannot, when the administration is complete and the bond becomes void and ineffective, apply to the Court to have the bond vacated and to be discharged from his suretyship. There is nothing in the Indian Succession Act or in the Rules of Practice to authorise such an application. *In the matter of* ARTHUR GERALD NORTON KNIGHT (1909) . **I. L. R. 33 Mad. 373**

SURETY BOND.

——— **forfeiture of—**

See CRIMINAL PROCEDURE CODE, SS. 514, 516 . . **14 C. W. N. 259**

SURETY FOR GOOD BEHAVIOUR.

——— *Fitness of surety—Pecuniary qualification, but not power of control—Grounds of rejection—Criminal Procedure Code (Act V of 1898), s. 122.* In determining the fitness of a surety under s. 122 of the Criminal Procedure Code, the first matter to be inquired into is his ability to pay the amount of the bond in case of default by the principal; but there may be other matters also to be considered as grounds of objection, which must be dealt with in each case as it arises. Where a surety is competent in a pecuniary sense, the fact that he is not in a position to

SURETY FOR GOOD BEHAVIOUR—*concld.*

exercise control over the person bound down, so as to ensure his good behaviour in future, is not a sufficient ground for his rejection. *Ram Pershad* v. *King-Emperor, 6 C. W. N. 593, Adam Sheikh* v. *Emperor, I L. R 35 Calc 400,* and *Jalil* v. *Emperor, 13 C. W. N. 80,* referred to JAFAR ALI PANJALIA *v.* EMPEROR (1910) . **I. L. R. 37 Calc. 446**

SURFACE WATER.

See PRESCRIPTION . **14 C. W. N. 825**

SURVEY ACT (BENG. V OF 1875).

———— **ss. 41, 62**—*Order—Effect of—Suit for confirmation of possession—Relief inconsistent with plaint.* S. 62 of the Survey Act is a bar to a suit by a plaintiff, against whom an order determining a boundary dispute has been made under the Survey Act, for confirmation of possession on the allegation that he has been in continuous possession from before the order, such an order having, under s 41 of that Act, the effect of a Civil Court decree, which is binding on the parties as regards the question of possession. When the plaintiff sues for confirmation of possession on declaration of title, alleging that he is in possession, and proves his title but fails to prove possession, the Court ought not to award him recovery of possession, unless on the facts alleged in the plaint the action amounts to one for restoration of possession. *Amir Hossein* v. *Imambandi, 11 C L R. 443,* and *Champu Dai* v *Uma Dai, 11 C L. R 151,* distinguished. BISSESSURI KOERI *v.* RAM PURTAP SINGH (1909) . . . **14 C. W. N. 366**

SURVEY SETTLEMENT.

See LAND REVENUE CODE (BOM. ACT V OF 1879), SS 3 (11) AND 217.
I. L. R. 34 Bom. 686

SURVIVORSHIP.

See HINDU LAW—PARTITION
I. L. R. 37 Calc. 703

SUSPENSION.

See LEGAL PRACTITIONER.
13 C. W. N. 521

SUSPENSION OF RENT.

See LANDLORD AND TENANT.
14 C. W. N. 446

T

TALUKDAR.

See OUDH ESTATES ACT (I OF 1869), SS. 8 AND 22, SUB-S (*11*)
I. L. R. 32 All. 599

See TALUKDARS (GUJARATH) ACT.

———— **Rights of Talukdar**—*Payments by relatives of talukdar holding sub-proprietary rights on his estate—Rules framed by British Indian Association of Oudh for maintenance of such relatives—Basis of calculation of such payments in second and third generations—Jurisdiction of Rent Court* The question between the parties to this appeal was as to the true construction of certain rules framed in 1867 by the British Indian Association of Oudh, and agreed to by the taluqdars, making provision, *inter alia*, for maintenance for the relatives of the latter holding sub-proprietary rights on their estates. The portion of the rules applicable was as follows :—This class will remain in possession of what they actually had at annexation "rent-free" during their lifetime, but subject to the payment in the second generation of 25 per cent. to the taluqdar, and in the third 50 per cent., and will not have transferable rights. If such persons pay the Government revenue *plus* 10 per cent. to the taluqdar they will have heritable rights in addition. *Held* (affirming the decision of the Court of the Judicial Commissioner), that the bulk sum on which the percentages were to be calculated was the "assumed rental" which formed the basis for the ascertainment of the Government revenue **payable by the Taluqdar (the Government revenue** being half the "assumed rental"). This **construction had the advantage of giving a fixed** basis for calculation, which was greatly in the interests of the taluqdars with reference to the charges on the property, and enabled all parties concerned to understand, year after year, and to forecast, their exact financial position Payments of 25 and 50 per cent. respectively on the "gross rental" demandable in each particular year, together with 10 per cent. in the sense of the rules (as contended for by the appellant, the taluqdar), besides being made on a varying basis, might exceed not only the Government revenue but the entire receipt of rental actually obtained for particular years, reducing greatly the rights of the relatives in possession as sub-proprietors and rendering precarious their provision for maintenance. A construction which would bring about such results was not warranted on a sound reading of the terms of the maintenance provisions. The additional sum of 10 per cent payable to the taluqdar (at any rate by the third generation) for the provision for maintenance of a heritable character might, under the circumstances that the payments to the taluqdar might not be regular, and that in any view the taluqdar's responsibility to the Government for the revenue was full and direct whether he received such payments or not be considered as a reasonable commission or insurance, and had accordingly been sanctioned in the rules under construction as well as by the rules regarding sub-settlement and other subordinate rights of property in Oudh scheduled in Act XXVI of 1866. The Court of Wards, who represented the appellant during his minority, made, on account of maintenance, certain payments to the respondent to which the appellant objected. The Court of the Judicial Commissioner declined to open up that matter in the present suit, holding that "it is not within the province of a Rent Court to determine whether the maintenance was or was

TALUKDAR—*contd.*

TALUKDAR—*concld.*

not payable ;'' and their Lordships of the Judicial Committee were of opinion that that was a right decision NAWAB ALI KHAN *v.* WAHID ALI (1909) **I. L. R. 32 All. 92**

TALUKDARS (GUJARATH) ACT (BOM. VI OF 1888).

——— **s. 31**—*Talukdar's estate—Talukdari estate—Estate held by a Talukdar on any other tenure* The expression Talukdar's estate means only the estate held by a Talukdar on Talukdari tenure and not property held on any other tenure which is distinguishable from the former *Khodabhai v Chaganlal, 9 Bom L R. 1122*, followed BHACHUBHA MAVSANGJI *v.* PATEL VELA DHANJI (1909) **I. L. R. 34 Bom. 55**

TALUQDAR.

See TALUKDAR.

See TALUKDARS (GUJARATH) ACT.

TAX.

——— **to recover money levied as—**

See LIMITATION ACT, 1877, SCH II, ARTS. 2, 61, 62, 120 . **I. L. R. 32 All. 491**

TAXATION.

See TAX.

TAXING OFFICER.

See APPEAL, VALUATION OF. **I. L. R. 37 Calc. 914**

See COURT FEES ACT (VII OF 1870), SS. 5 AND 12 . . **I. L. R. 32 All. 59**

TENANCY.

——— **division of—**

See LANDLORD AND TENANT **14 C. W. N. 335**

TENANCY BY SUFFERANCE.

See GRANT . **I. L. R. 37 Calc. 674**

TENANT.

——— **interested in subject of dispute—**

See DISPUTE CONCERNING LAND **I. L. R. 37 Calc. 285**

TENANTS-IN-COMMON.

——— *Hindu Law—Mitakshara—Daughters inheriting property from their father—Shares separate and absolute.* When the property so inherited is not physically divided, it is held by the daughters as tenants-in-common and not as joint tenants and there is no survivorship between them. VITHAPPA *v* SAVITRI (1910) **I. L. R. 34 Bom. 510**

TENDER.

See JURISDICTION . **I. L. R. 34 Bom. 13**

See TRANSFER OF PROPERTY ACT, S 84 **I. L. R. 33 Mad. 100**

TENURE-HOLDERS.

——— **liability of—**

See REVENUE SALE. **I. L. R. 37 Calc. 559**

TESTAMENTARY AND INTESTATE JURISDICTION.

See PROBATE . **I. L. R. 37 Calc. 387**

THEFT.

See PENAL CODE, S. 379.

1. ——— *Penal Code, s. 379—Theft—Claim of title by the accused—Conviction for theft illegal, unless the Court finds the claim to be a pretence* In a case of alleged theft of fish from a tank which the accused claimed to have been in their possession and not in the complainant's . *Held*, that if the accused asserts a claim to the thing alleged to have been stolen by him, he should not be convicted unless the Court is in a position to say that the claim is a mere pretence. DHIRENDRA MOHAN GOSSAIN *v* EMPEROR (1909) **14 C. W. N. 408**

2. ——— *Penal Code, s. 379—Dishonest intention—Retaining passenger's umbrella to make him pay fare.* The accused, an employee under a Steamer Company, whose business it was to check the tickets of passengers, asked to see the complainant's tickets but the complainant not having got one, the accused took possession of his umbrella as security that he might be compelled to pay his fare : *Held*, that there being no suggestion that the accused intended either to get any wrongful gain to himself by compelling payment of the fare or to cause any wrongful loss to the complainant who was bound to pay his fare, a conviction for theft was wrong. MATABBAR SHEIKH *v.* EMPEROR (1910) . . **14 C. W. N. 936**

THIRD PARTY.

——— *Practice—Third-party procedure—Directions, refusal to give—Discretion.* The general principle on which a Court will issue third-party directions is :—(i) That there must be a clear case of contribution or indemnity from the third party, (ii) that all the disputes arising out of a transaction as between the plaintiff and the defendant and between the defendant and a third party can be tried and settled in one suit, and (iii) that in cases of contract and sub-contract it must appear that the contract between the plaintiff and the defendant has been imported into the contract between the defendant and the third party. Under the rules now in force the third party cannot be cited so as to be bound by the trial of one particular question which is identical as between the plaintiff and the defendant and as between the defendant and the third party *Baxter* v. *France (No. 2)*, [*1895*], *1 Q. B. 591*, followed W. & A. GRAHAM & Co. *v.* CHUNILAL HARILAL & Co. (1909) **I. L. R. 34 Bom. 423**

TITLE.

——— question of—

See LIMITATION ACT (XV OF 1877), SS 5 AND 7 . . **I. L. R. 34 Bom. 589**

1. ——— Priority of Title—*Mortgagor and Mortgagee—Deposit of Title Deeds—Right to decree for Foreclosure—Equity of Redemption—Sale of right, title, and interest of Mortgagor at Court sale in execution of decree* This was a case of contested title to two plots of land near Moulmein. The title of the plaintiff (appellant) was that by deed of 26th July 1890 (Ex. B) the property was mortgaged to a firm who, by deed of transfer dated 8th November 1894 (Ex A), assigned the mortgage debt and transferred the security for it to one *A R* and he, in October 1895, deposited the title deeds with the plaintiff by way of equitable mortgage In 1901 the plaintiff enforced the mortgage by suit against *A R*, and on 31st December of that year obtained a decree for sale in default of payment, in pursuance of which the right, title and interest of *A R* in the property comprised in the above title deeds were sold by auction, and the plaintiff, who bid by leave of the Court, became the purchaser, a certificate to that effect under the hand and seal of the Court being endorsed on Ex A. The other title was set up by a person who was not one of the original defendants (the mortgagors of 1890), but a person added as a party defendant by consent subsequently to the filing of the suit. He stated that, after the assignment to *A R* of the mortgage debt, the original mortgage was satisfied by the mortgagors making over the mortgaged property to *A R*, who by deed dated 14th March 1895, mortgaged it to the defendant, and he brought a suit on the mortgage, and on 21st July 1902 obtained a decree for payment in six months or foreclosure, and, on default being made, became absolute owner of the property. The District Judge found (issue 2) that the mortgaged property was not made over to *A R* in satisfaction of the mortgage debt, and so holding, thought it unnecessary to decide issue 3, "Did *A R* mortgage the property to the defendant?" and issue 4, "Did the property, by virtue of the decree of 21st July 1902, become the absolute property of the defendant?" He held that the plaintiff had acquired the rights of the original mortgagee in the property under Ex. B, and gave him a mortgage decree with interest. On appeal, the Chief Court reversed that decision, substantially on the ground that *A R* had no interest in the property at the date of the sale to the plaintiff It was pointed out, *inter alia*, on appeal to the Judicial Committee that the mortgage of 14th March 1895 was a usufructuary mortgage on which the defendant had no legal right to a decree for foreclosure, that that mortgage, by reason of the defendant being himself only a mortgagee, the equity of redemption being outstanding in the original mortgagors, was beyond the power of the defendant to grant and was therefore void; that the plaintiff was not a party to the decree of 21st July 1902, and therefore could not be affected by it; and that, notwithstanding the alleged

TITLE—*contd.*

mortgage of 1895, the title deeds remained in the possession of *A R*. Their Lordships were of opinion that the decision of the Chief Court was untenable, and finding that it was impossible to pronounce a final judgment without serious risk of doing injustice to one or other of the two parties principally concerned, allowed the appeal, set aside the decrees of the lower Courts, and remanded the suit to the District Judge for findings on issues 3 and 4 with an inquiry as to the priority between the plaintiff and the defendant, and for retrial MAUNG THA HNYIN *v* MAUNG MYA SU (1909) . . . . **I. L. R. 37 Calc. 239**

2. ——— Title, suit for—*Partition—Jurisdiction of Civil Court—Permanent tenure—Estates Partition Act (Beng VIII of 1876), ss. 7, 111, 149* The plaintiffs and the defendants were co-owners of a certain *talul* In the course of proceedings under the Estates Partition Act (Beng. VIII of 1876), the plaintiff raised a claim to a *miras* or permanent tenure, in respect of certain lands comprised in the said *talul*: The Revenue Officer held in favour of the defendants that the plaintiff's title to the *miras* was not established. Thereupon, the plaintiff sought relief in the Civil Court, asking that his title to the *miras* be declared. The contention raised on behalf of the defendants appellants was that the order of the Revenue Officer was made under s 111 of the said Act, and that the suit was not maintainable by reason of s 149 of the same Act: *Held*, that s. 111 of the Act provided for cases of permanent intermediate tenures, and prescribed the mode in which partition was to take place when the fact of such permanent tenure was established, and had no application to the present case; and that a suit for declaration of title to the permanent tenure was maintainable, the object of s. 149 being not to exclude the jurisdiction of the Civil Court in matters which involved a question of title. *Ananda Kishore Choudhry* v *Dayi Thakurain, I. L R 36 Calc 726*, referred to: *Held*, further, that if in the course of a partition proceeding under Bengal Act VIII of 1876, any question arose as to the extent or otherwise of the tenure, the tenure-holder not being a party to the proceedings, he was not affected in any manner by the decision which might be arrived at by the revenue authorities for the purpose of partition between the proprietors It would be unreasonable to hold that a party who appeared before the revenue authorities in his character as a proprietor should be finally concluded by a decision upon a question of title, which would not have been binding upon him, if he had been a stranger to the proceedings. Where the tenant based his title to the permanent tenure on the existence of the tenure for 75 years and more, prior to the institution of his suit for declaration of his title, and on his purchase and possession from the date of his purchase up to the date of the partition proceedings under the Estates Partition Act: *Held*, that under the circumstances the tenancy was a permanent one *Nilratan Mandal* v. *Ismail Khan, I. L. R 32 Calc. 51*,

Naba Kumari Debi v. *Behari Lal Sen, I. L R 34 Calc. 902*, referred to. *Abdul Wahed Khan* v. *Shaluka Bibi, I. L. R. 21 Calc. 496*, distinguished. The only effect of such a decree is to decide that the tenure is permanent, and the question as to whether the rent is or is not fixed in perpetuity is left open for decision in a suit properly framed for the purpose JANAKI NATH CHOWDHRY *v.* KALI NARAIN ROY CHOWDHRY (1910)
I. L. R. 37 Calc. 662

TODA GIRAS ALLOWANCE.

See PENSIONS ACT, 1871, ss 6, 8, 11.
I. L. R. 34 Bom. 154

TORT.

See CONTRIBUTORY NEGLIGENCE
I. L. R. 34 Bom. 427

TRADE.

See HINDU LAW—MINOR.
I. L. R. 34 Bom. 72

TRADE-MARK.

1. ——— Infringement of Trade-mark —*Essentials necessary to maintain action for.* It is settled law that a dealer in, or a manufacturer of a particular article who adopts a name for that article, whether the name be a purely fancy name or a descriptive name, cannot restrain another dealer from using the same name simply upon and the ground that the article so named has acquired a reputation, even though it may be that the public have grown accustomed to buy the article in question only relying on the name and without examining the quality of the article For a man to be entitled to restrain another from using a particular name with reference to a commodity he must show that the public have grown to associate that particular name with himself as the manufacturer of, or dealer in, the article. *Burlow* v. *Govindram, I. L. R. 24 Calc. 364*, referred to. MAHOMED ESUF v. RAJARATNAM PILLAI (1909)
I. L. R. 33 Mad. 402

2. ——— *Infringement of Trade-mark—Registration, effect of—Vendor's mark—Passing-off action—Injunction, variation of.* An action for the infringement of a trade-mark is maintainable, even though the plaintiff be not the manufacturer or selector of the goods, but merely a vendor of them. There is no system of registration of trade-marks in India which gives a statutory title. In a suit for the infringement of a trade-mark, the plaintiff claimed the right to be the exclusive user of a flower of a particular design, but his evidence was directed to establish that his goods were recognised by the general design of a flower (*phul-marka*) :—*Held*, that in the circumstances of the case, an association had been established between the plaintiff's particular design and the goods sold thereunder, and inasmuch as the defendants had adopted the plaintiffs' trade-mark for his own purposes, the plaintiff was entitled to an injunction. Although no specific objection was taken on appeal

to the form of the injunction ordered in the Court of first instance, which proceeded on the erroneous assumption that the goods sold by the plaintiff were prepared by him, a variation should be introduced into the terms of the injunction, so as to fit it with the facts as actually established JAWALA PRASAD *v* MUNNA LAL SEROWJEE (1909)
I. L. R. 37 Calc. 204

TRANSFER.

See CRIMINAL PROCEDURE CODE, ss. 526, 107, 117, 118 . **I. L. R. 32 All. 642**

See HINDU LAW—WIDOW.
14 C. W. N. 106

See OCCUPANCY HOLDING.
14 C. W. N. 68

——— by lessee—

See LESSOR AND LESSEE.
I. L. R. 37 Calc. 683

——— of application—

See CIVIL PROCEDURE CODE, 1908, s 24
I. L. R. 34 Bom. 411

——— of execution proceedings—

See EXECUTION OF DECREE
I. L. R. 37 Calc. 574

——— of portion of jote—

See LANDLORD AND TENANT
I. L. R. 37 Calc. 687

——— of tenants rights—

See PARTIES . . **14 C. W. N. 703**

——— *Transfer of share of a claim in respect of property not in possession, if valid.* A transfer by a person of a share of his claim with respect to property of which he is not in possession is valid and operative. An agreement between the transferor and the transferee that it shall not be competent to the former to confess judgment in favour of the defendant or to enter into compromise or withdraw the claim in respect of the whole or any part of the subject matter of the suit instituted for the recovery of the property, is valid and should be given effect to *Lal Achal Ram* v. *Kazim Husain Khan, L. R. 32 I A. 113 : s c. 9 C. W. N 477*, followed In such a suit, if the transferor wants to withdraw, he may be permitted to do so, but the suit may proceed at the instance of the transferee. RAMDHAN PURI *v* GOSSAIN DALMIR PURI (1909) . . **14 C. W. N. 191**

TRANSFER OF PROPERTY.

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 6, CL. (*a*)
I. L. R. 32 All. 88

TRANSFER OF PROPERTY ACT (IV OF 1882).

——— ss. 2, 108 (*h*).

See LANDLORD AND TENANT—TREES.
I. L. R. 37 Calc. 815

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— **s. 6, cl. (*a*)**—*Reversioner—Release by reversioner of his interest in certain promissory notes expectant on death of present holder.* The reversioner expectant on the death of a Hindu widow executed a document purporting to be a release in favour of the widow of his interest in certain Government promissory notes to which the widow was entitled during her life *Held*, that this was a transfer of the chance of an heir apparent succeeding to property and therefore void. *Sham Sunder Lal* v *Achhan Kunwar, I L. R. 21 All 71*, referred to HARGAWAN MAGAN *v* BAIJ NATH DAS (1909) . . . **I. L. R. 32 All. 88**

——— **s. 43**—*Deshgat Vatan—Mortgage—Subsequent enlargement of the mortgagor's estate—Private property—Mortgagee's claim to hold the property against the mortgagor's heir—Regulation XVI of 1827* A mortgagee of D shgat Vatan knew that the property which was mortgaged to him was land appurtenant to an hereditary office and inalienable beyond the life-time of the incumbent Subsequently to the mortgage the estate of the mortgagor was enlarged so as to be alienable in the life-time of the holder After the enlargement the mortgagee having claimed to hold the property against the heir of the mortgagor: *Held*, that the mortgagee took only such estate as the holder of the Vatan property was capable of conveying to the mortgagee at the time of the mortgage and that the mortgagee could not claim to retain the property in virtue of the mortgage after the death of the mortgagor. GANGABAI *v* BASWANT (1909) **I. L. R. 34 Bom. 175**

——— **s. 52.**—The rule of *lis pendens* will operate in favour of a plaintiff who at the time of the transfer was erroneously prosecuting his suit in a Court which from defect of jurisdiction was unable to entertain it and in consequence returned it for presentation to the proper Court which Court ultimately decreed the suit on the basis of a lawful compromise. TANGOR MAJHI *v* JALADHAR DEARI (1909) . **14 C. W. N. 322**

——— **s. 53**

See FRAUDULENT CONVEYANCE.
I. L. R. 33 Mad. 335

——— *Subsequent creditors are within the rule in cl.* (1) *of the section—Presumption in cl 2 of section applies to subsequent creditors.* Subsequent creditors are within the rule enunciated in the first clause of s. 53 of the Transfer of Property Act and a settlement can be avoided at the instance of subsequent creditors. *Hussain Bhai* v *Haji Ismail Sait, 5 Bom. L R. 255*, referred to The presumption in cl. 2 of s 53 of the Transfer of Property Act applies in the case of subsequent creditors THOMAS PILLAI *v* MUTHURAMAN CHETTIAR (1909) . **I. L. R. 33 Mad. 205**

——— **s. 54**—*Sale—Compromise—Land worth less than ₹100—Registration of deed, or delivery of possession not necessary.* The terms of a compromise affecting a claim to land of the value of less than ₹100 were reduced to writing. The document was not registered, nor was the transaction accompanied by delivery of possession. The material provisions of the deed were as follows:—"You and we are co-sharers. In your and our land, Survey No 20, there is a well. Therein you and we have a joint share Partition is to be made including it After the said (survey) number is divided, we shall give 9 *pands* more from our share and both of us should put up a bandh (embankment) in the middle of the well, and possession and enjoyment should be carried on according to our respective shares According to this condition we should not cause obstruction to each other One who will act in contravention of this agreement will be able to reimburse loss which may be caused" The lower Appellate Court regarded the transaction as a sale which under the provisions of the Transfer of Property Act (IV of 1882) required delivery of possession in order to validate it. *Held*, that the terms of the deed did not bring the transaction within the category of a sale, as defined in the Transfer of Property Act (IV of 1882). *Held*, further, that the document in question merely embodied a compromise between the parties and was in effect an acknowledgment of existing rights; and that therefore no delivery of possession was necessary *Rani Mewa Kuar* v. *Rani Hulas Kuwar, L. R. 1 I A. 157*, followed. KRISHNA TANHAJI *v* ABA SHETTI PATIL (1909) **I. L. R. 34 Bom. 139**

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— **s. 54**—*concld.*

——— **s. 55, cl. 4 (*b*)**—*Sale—Consideration therefor—Covenant by purchaser to discharge liabilities of seller—Breach of covenant gives rise to action for damages only—Statutory charge under cl. 4 (b) negatived by contract to the contrary arising by implication* When a purchaser of immoveable property covenants in consideration of the transfer of such property to him, to discharge certain liabilities of the seller and further stipulates, that upon his failure to do so he shall be liable for any damages resulting from such default: *Held*, that upon breach of such a covenant the seller is entitled to be compensated in damages but has no charge upon the property in the hands of the purchaser under s. 55, cl. 4 (*b*) of Act IV of 1882 To negative the statutory charge afforded by s. 55 it is sufficient if 'a contract to the contrary' arises by implication. *Webb* v *Macpherson, L. R. 30 I. A. 238*, referred to *In re Albert Life Assurance Company* v. *Western Life Assurance Society, 11 Eq. 164*, followed. *Ramakrishna Ayyar* v. *Subramania Ayyar, I. L. R 29 Mad. 305*, distinguished. ABDULLA BEARY *v.* MAMMALI BEARY (1910) **I. L. R. 33 Mad. 446**

——— **ss. 55 (6) (*b*), 123**—*Registration Act (III of 1877), s. 17—Exemption of assessment in lieu of services rendered or to be rendered—Document granting exemption not stamped or registered—Sale—Gift—Hindu Law—Nibandha.* In consideration of

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 55—*concld.*

services already rendered or thereafter to be rendered by the defendant to the predecessor-in-title of the plaintiff the latter executed two documents whereby he released the defendant from payment to him of the assessment on certain lands. Those documents were not stamped or registered The plaintiff sued to recover arrears of assessment from the defendant, who pleaded exemption under the two documents. The lower Appellate Court found the transaction to be one of sale, and applying s. 55 (6) (*b*) of the Transfer of Property Act, 1882, ordered the plaintiff to pay to the defendant what the Court calculated to be the equivalent of purchase-money before he (the plaintiff) could recover the assessment: *Held*, that the transaction evidenced by the documents could not be regarded as a sale, for the consideration could not be regarded as "price;" and even if it could be assessed in money value, it was vitiated by the fact that it was vague and uncertain as to future services. *Held*, further, that the transaction must be regarded as one of gift. It was a gift of the grantee's right to assessment; and such a right is regarded as *nibandha* in Hindu Law and therefore immoveable property. The documents not having been registered, the gift did not operate. *Held*, also, that there having been no registered instrument in support of the defendant's title the right set up in defence must be negatived. MADHAVRAO *v* KASHIBAI (1909) **I. L. R. 34 Bom. 287**

——— s. 59.

See ATTESTATION.
I. L. R. 37 Calc. 526

——— s. 67.

See MORTGAGEE'S RIGHT TO AN ORDER FOR SALE . **I. L. R. 34 Bom. 462**

See PERIOD, EXPIRY OF THE.
I. L. R. 34 Bom. 462

See USUFRUCTUARY MORTGAGE.
I. L. R. 34 Bom. 462

——— *Usufructuary mortgage—Date payable within a fixed period—Expiry of the period—Mortgagee's right to an order for sale.* Where under a usufructuary mortgage the mortgage debt is made payable within a fixed period, the mortgage is not purely a usufructuary mortgage and the mortgagee has, in the absence of a contract to the contrary, the right to an order under s 67 of the Transfer of Property Act (IV of 1882) that the property be sold after the debt has become payable. *Mahadaji* v. *Joti*, *I. L. R. 17 Bom. 425*, and *Krishna* v. *Hari*, *10 Bom. L. R 615*, explained. DATTAMBHAT RAMBHAT *v* KRISHNABHAT (1910) . **I. L. R. 34 Bom. 462**

——— s. 72—*Mortgage—Redemption—Purchase by mortgagee of portion of mortgaged property—Right of mortgagee to put whole burden of mortgage debt on remainder—Enhancement of revenue assessed on mortgaged property whose mortgagor makes himself liable for it and mortgagee pays it to protect property* In 1868 a village named Kachaura was mortgaged to the predecessors of the respondent (defendant), and in 1870 the same mortgagor mortgaged 11 biswas of Kachaura and 6 biswas of another village called Agrana to the same mortgagee Under the terms of the later mortgage, the mortgagee was to have possession of the mortgaged properties, realize the rents and profits, and pay therewith the Government revenue which was separately assessed on the two shares · out of the balance he was to retain the interest of the loan, and pay the mortgagor a yearly sum as malikana. As a fresh settlement was in progress the mortgage further provided that "if at the recent settlement the Government revenue is enhanced or decreased to some extent I (the mortgagor) shall be entitled to and liable for it, and the mortgagee shall have nothing to do with it." The revenue on the two properties was enhanced, on Kachaura by R895, and on Agrana by R469 In 1873 the equity of redemption in Agrana was purchased by the predecessor of the appellants (plaintiffs) who afterwards sued and obtained a decree for the apportionment of the malikana due in respect of his share of Agrana, which amount they subsequently received annually, less the enhanced amount of the Government revenue assessed on it. In 1878 the mortgagee purchased the whole of Kachaura in execution of a decree obtained by him on the mortgage of 1868, but he only obtained possession of an 11 biswa share of it. The mortgagee had from the date of the enhancement up to the time of his purchase paid the enhanced revenue assessed on Kachaura for which the mortgagor had made himself liable on the terms of the mortgage In a suit by the appellants to redeem their 6 biswas share of Agrana on payment of a proportionate amount of the mortgage money, and for surplus profits if any. *Held*, by the Judicial Committee (affirming the decree of the High Court), that Agrana was liable for the whole mortgage debt, and the appellants could not therefore redeem on payment of only a proportionate amount. *Held*, also, (reversing the decree of the High Court), that in calculating the amount to be paid on redemption the mortgagee was not entitled to tack on to the mortgage debt the amount he had paid for the enhanced revenue on Kachaura The mortgagee was, on the terms of the mortgage, liable to pay the Government revenue. The clause as to the enhanced revenue could not be construed as meaning that the mortgagor agreed to pay every year separately the enhanced revenue, nor did it alter the liability of the mortgagee to meet the demand for the Government revenue. In the case of Agrana he had protected himself by deducting the enhanced revenue from the malikana; but he had omitted to do so in the case of Kachaura, and could not now be allowed to throw the burden of

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— **s. 72**—*concld.*

his laches on Agrana. It was not the mortgagor who was seeking to redeem the property, and any equity that might have been invoked against him, did not, in their Lordships' opinion, arise as against the appellants. BOHRA THAKUR DAS *v* COLLECTOR OF ALIGARH (1910)
I. L. R. 32 All. 612

——— **s. 73**—*Putni created and registered after mortgage of revenue-paying estate—Act XI of 1859, ss. 40, 41—Decree on mortgage against proprietor and putnidar—Sale of estate for arrears of revenue—Transfer of lien to sale-proceeds if relieves putni interest from liability to sale.* The proprietor of a revenue-paying estate executed mortgage in favour of *A* and subsequently granted a *putni* to *B* who had it registered under s. 40 of Act XI of 1859. The mortgagee, *A*, obtained a decree on his mortgages in a suit in which the *putnidar B* was made a party. After the decree the estate was sold for arrears of revenue subject to the encumbrance of the *putni* The mortgagee withdraw the surplus sale-proceeds in part satisfaction of his decree and for the unsatisfied balance applied for sale of the *putni* interest: *Held*, that s. 73 of the Transfer of Property Act by providing that the mortgage-lien is to be transferred to the surplus sale-proceeds did not relieve the *putni* from liability to sale in satisfaction of the mortgage decree. A mortgagee is not bound, upon receipt of notice of an application for registration of an incumbrance under s 41 of Act XI of 1859, to oppose such application *Quære:* Whether such opposition by a mortgagee would be a sufficient ground for the rejection of the application by the revenue officer. *Kristo Dass Kundoo* v. *Ramkant Roy Chowdhry, I. L R. 6 Calc. 142; Gosto Behary Pyne* v *Shib Nath Dut, I. L. R 20 Calc 241; Kamala Kant Sen* v. *Abdul Barkat, I. L. R 27 Calc. 181*, considered. SUSILABALA DASI *v.* DINABANDHU NANDI (1909) . . **14 C. W. N. 186**

——— **s. 74.**

See MORTGAGE . **I. L. R. 37 Calc. 589**

——— *Mortgage—Prior and subsequent mortgagees—Right of purchaser of mortgaged property in execution of a decree of a subsequent mortgagee who has paid off a first mortgage as against a second mortgagee suing for sale* *A* mortgaged certain property first to *B* and afterwards to *C* and finally sold it to *D*. *D* mortgaged the property to *E*, who paid off *B*'s mortgages and brought the property to sale in satisfaction of his own mortgage, and it was purchased by *M*. *Held*, on suit for sale on his mortgages by *C*, the second mortgagee, that *M* was entitled to hold up as a shield against *C* the mortgages in favour of *B*, which had been satisfied by *E*. *Kallu* v. *Sant Lal, All. Weekly Notes (1896) 129, Baldeo Prasad* v. *Uman Shankar, I. L. R. 32 All. 1*, and *Mamraj* v. *Ramji Lal, 7 A. L. J. 15*, referred to. *Baijnath* v. *Murlidhar, All. Weekly Notes (1907) 85*, distinguished. MATI-ULLAH KHAN *v.* BANWARI LAL
I. L. R. 32 All. 138

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— **s. 74**—*concld.*

——— **ss. 76, 92.**

See LIMITATION ACT, s 23, SCH II, ARTS. 36, 115, 116 . **I. L. R. 33 Mad. 71**

——— **s. 83**—*Deposit paid to mortgagee—Balance of mortgage debt promised—Mortgage not discharged* The consequences resulting from a payment into Court under s. 83 of the Transfer of Property Act, 1882, only occur when the amount paid in is found to be or is accepted by the mortgagee as being equivalent to the full amount due under the mortgage in suit. HAR DAYAL *v.* PIRTHI SINGH (1909) . . . **I. L. R. 32 All. 142**

——— **s. 84**—*Tender, what amounts to.* Under s. 84 of the Transfer of Property Act, interest ceases to run on the principal amount from the date of tender; it is not necessary that the mortgagor should, after such tender, always keep the money ready for payment. VELAYUDA NAICKER *v.* HYDER HUSSAIN KHAN SAHIB (1909)
I. L. R. 33 Mad. 100

——— **s. 85**—*Suit upon mortgage—Mortgage executed by adult members of the family—Suit brought against all members excepting a minor—Decree—Sale of mortgaged property in execution—Minor seeking to exempt his share from sale—Representation of the minor by the adult members.* A Hindu family living jointly consisted of *S*, his son *M*, and his two grandsons S^1 and *R* (minors) by a predeceased son. *S* mortgaged a house for purposes allowed by Hindu law The deed of mortgage was signed by *S M* and S^1, represented by his mother. The mortgagee sued on the mortgage and joined *S*, *M* and S^1 as party defendants. The suit passed into a decree, in execution of which the house was sold at a Court auction and purchased by the plaintiff In a suit by the plaintiff against *M*, S^1 and *R* (*S* having died) for possession of the house, *R* claimed to exempt from the sale his share in the house which was one-fourth, on the ground that as was not a party to the suit, he was not bound by the decree. *Held*, that though *R* was omitted from the suit he was represented by the adult members, who were the managing members of the family. *Held*, also, that the debt was contracted by *S*, the grandfather of *R*, and *R* was bound by it unless it had been contracted for illegal or immoral purposes. RAMKRISHNA *v.* VINAYAK NARAYAN (1909) . . **I. L. R. 34 Bom. 354**

——— **s. 89.**

See MORTGAGE . **I. L. R. 37 Calc. 897**

——— **s. 90**—*Civil Procedure Code (Act XIV of 1882), ss. 43 and 50—Transfer of Property Act (IV of 1882), s 90—Suit to recover mortgage-debt by sale of mortgaged and unhypothecated property—*

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 90—*concld.*

Decree against mortgaged property alone—Sale—Amount realised not sufficient—Application for supplemental decree to recover balance by sale of other property—Limitation—Putting forward allegations at a late stage. In a suit upon a mortgage dated the 18th April 1887 the plaintiff claimed, on the 18th April 1899, to recover the mortgage-debt by sale of the mortgaged property and the balance, if any, from the non-hypothecated property of the mortgagor. The decree was passed in plaintiff's favour against the mortgaged property alone. The amount realized by the sale of the mortgaged property being insufficient to satisfy the decree, the plaintiff applied under s. 90 of the Transfer of Property Act (IV of 1882) for a supplemental decree against the other property of the mortgagor. The first Court found that the claim for a personal decree against the mortgagor was time-barred. On appeal by the plaintiff, he attempted to prove that the claim was within time owing to an intermediate payment by the defendant but the Appellate Court found that the plaintiff failed in his attempt and confirmed the decree. On second appeal by the plaintiff · *Held*, confirming the decree, that the mortgage in suit being of the year 1887 and the suit of the year 1899, the plaintiff's right to a personal decree against the mortgagor was time-barred, the plaintiff having failed to show the ground on which exemption from the law of limitation was claimed. *Held*, further, that the plaintiff could not be allowed at a late stage of the suit to bring forward for the first time allegations which it was necessary to prove in order to show that he was entitled to a further decree against the defendant personally. GULAM HUSSEIN *v.* MAHAMADALLI IBRAHIMJI (1910) . **I. L. R. 34 Bom. 540**

——— s. 95.

See MORTGAGE . **14 C. W. N. 617**

——— s. 99.

See MORTGAGE . **14 C. W. N. 579**

——— s. 101—*Prior and subsequent mortgagees—Purchase of mortgaged property by prior mortgagee—Suit for sale by subsequent mortgagee Held*, that a prior mortgagee who had in the exercise of a right of pre-emption purchased the property mortgaged to him had a right to be repaid the money due in respect of his mortgage before a subsequent mortgagee could bring such property to sale in execution of a decree on the mortgage held by the latter. BALDEO PRASAD *v.* UMAN SHANKAR (1907)] . **I. L. R. 32 All. 1**

——— s. 105—*Lease—Proof—Kabuliyat executed by alleged lessees if sufficient.* A kabuliyat by itself does not prove a lease, being only an undertaking by the prospective tenant to take the lease. *Nand Lal* v. *Hanuman Das, I. L. R. 26 All. 368; Kashi Gir* v. *Jogendra Nath Ghose, I. L. R. 27 All. 136; Turof Sahib* v. *Esuf Sahib, I. L. R. 30 Mad. 322*, approved. NILMAMUD SARKAR *v.* BOUL DAS (1909) . . . **14 C. W. N. 73**

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 105—*concld.*

——— ss. 107, 108 (*b*).

See CIVIL PROCEDURE CODE, 1882, s 375. **I. L. R. 33 Mad. 102**

——— s. 108.

See LESSOR AND LESSEE. **I. L. R. 37 Calc. 683**

——— Failure of lessor to put lessee in possession—Absence of request by lessee to be put in possession—Applicability of section to agricultural leases. In a case where the lessor does not put the lessee in possession, but there is no obstruction or likelihood of obstruction to the lessee taking possession of the same, and he neither tries nor requests the lessor to put him in possession. *Held*, in a suit by the lessor for rent, that the lessee is liable NARAYANASWAMI NAIDU GARU *v.* YERRAMILLI RAMAKRISHNAYYA (1910) **I. L. R. 33 Mad. 499**

——— s. 108 (*j*).

See LANDLORD AND TENANT. **I. L. R. 37 Calc. 377**

——— ss. 108, 117.

See LANDLORD AND TENANT. . **L. R. 37 Calc. 723**

——— s. 123.

See OUDH ESTATES ACT (I OF 1869), SS. 13, 16 AND 17 . **I. L. R. 32 All. 227**

——— ss. 130, 131, 134—*Transfer of debt, notice of—Duty of debtor on receiving notice from transferee.* Where a creditor hypothecates a debt due to him and authorises the person to whom the debt is hypothecated by power-of-attorney in writing to recover the debt from the debtor, the debt is absolutely transferred to the transferee under s. 130 of the Transfer of Property Act. Notice of the transfer is not necessary to perfect the title of the assignee but until the debtor receives notice of the assignment in accordance with law his dealings with the original creditor will be protected. The notice of transfer need not necessarily be free from any condition or qualification A debt was assigned absolutely, and the debtor received notice of assignment from the transferor, who at the same time requested the debtor to pay only if the liability forming the consideration for the transfer was not discharged. The debtor also received notice of the assignment from the transferee who claimed payment. The transferee did not represent that he had discharged the claim on account of which the transfer was made. The debtor after receiving the above notices refusing to recognise the assignment paid the amount to the transferor :—*Held*, that the payment was inoperative and that the

TRANSFER OF PROPERTY ACT (IV OF 1882)—*concld.*

——— ss. 130, 131, 134—*concld.*

transferee was entitled to recover from the debtor. If the fact of the assignment or its validity is disputed, the only safe course for the debtor who has received notice of the assignment is not to pay either party but to ask them to interplead. *William Brandt's Sons & Co.* v. *Dunlop Rubber Co.*, [*1905*] *A C. 454*, referred to GOPALAKRISHNA IYER *v.* GOPALAKRISHNA IYER (1909) **I. L. R. 33 Mad. 123**

——— s. 168, cl. (*o*)—*Principle applicable to agricultural leases—Mulgeni tenant has no right to fell timber standing at time of grant* Although Chap. V of the Transfer of Property Act does not apply to agricultural leases, the principles embodied therein may be applied to such leases. The rules contained in s. 103 (*h*) (*o*) will apply to mulgeni leases and a mulgeni tenant is not entitled to cut trees standing at the date of grant The law applicable to occupancy tenants will not apply to such leases as the former is not a tenant but one holding divided ownership. CANGAMMA *v* BHOMMAKKA (1909) . . **I. L. R. 33 Mad. 253**

TRANSFERABILITY.

See BUILDING LEASE **I. L. R. 37 Calc. 377**

TRANSIT.

——— duration of—

See SALE OF GOODS ACT (56 AND 57 VIC. C. 71), SS 45 AND 47 **I. L. R. 34 Bom. 640**

TREES.

——— right of removal of—

See LANDLORD AND TENANT **I. L. R. 37 Calc. 815**

——— *Trees planted after lease —Right of removal of trees by tenant—Fixtures, doctrine of—Bengal Tenancy Act (VIII of 1885), s. 23—Transfer of Property Act (IV of 1882), ss 2, 108 (h)* In the absence of any special provision in a lease granted before the Transfer of Property Act (IV of 1882) came into force, the property in the trees planted by the lessee after a *lami* lease had been granted does not vest in the landlord The rule laid down in s. 108, cl (*h*) of the Transfer of Property Act (IV of 1882), has no application to such a case. The lease in the present case not being for agricultural or horticultural purpose, s. 23 of the Bengal Tenancy Act has no application. The doctrine of the English Law of Fixtures cannot be appropriately extended to this country on equitable grounds. *Bain* v. *Brand, 1 App. Cas. 762, Mears v. Callender*, [*1901*] *2 Ch. 388, Elues* v *Maw, 2 Smiths Leading Cases 189 : 3 East 38, Ness* v. *Pacard, 2 Peters 137*, referred to. The Law of Fixtures is not recognised under the Hindu or Mahomedan laws. *Thakoor Chunder Paramanick* v. *Ramdhone Bhuttacharjee, 6 W. R. 228; B. L. R F. B. 595, Secretary of State* v. *Charlesworth Pilling & Co., I L R 26 Bom. 1, Khodeeram Serma v. Trilochan, 1 Mac Sel Rep. 35, Jankee Singh* v. *Bukhooree Singh, (1856) Beng S D A 761, Pogose* v. *Nyamutoollah, (1858) Beng S. D A. 1517, Brij Bhookun* v *Dabee Dyal, (1863) 2 Agra S. D. A. 480, Kalee Pershad Dutt* v *Couree Pershad Dutt, 5 W. R. 108*, relied upon Before the passing of the Transfer of Property Act the doctrine of the English Law of Fixtures did not prevail in this country, and the provisions of that Act substantially reproduced the law on this subject as recognised by Hindu and Mahomedan jurisprudence *Ismai Kani Rowthan* v. *Nazarali Sahib, I. L. R. 27 Mad. 211*, referred to. MOFIZ SHEIKH *v.* RASIK LAL GHOSE (1910) . . **I. L. R. 37 Calc. 815**

TREES—*concld.*

TRESPASSER.

See RECORD-OF-RIGHTS. **14 C. W. N. 812**

TRUST.

See MAHOMEDAN LAW—TRUST. **I. L. R. 34 Bom. 604**

TRUSTEE.

See MORTGAGE . . **14 C. W. N. 579**

——— appointment of—

See RELIGIOUS ENDOWMENTS ACT (XX OF 1863), S. 5 . **14 C. W. N. 1104**

——— loan by—

See MAHOMEDAN LAW—ENDOWMENT **I. L. R. 27 Calc. 179**

——— Powers of investment of trustee *—Investment by trustees, who are members of a firm, in the firm under direction of cestui que trust —Firm does not hold the money in a fiduciary capacity—Indian Trusts Act, s 51* Where the settlor appoints the members of a banking firm as trustees and directs them to invest the trust funds with the firm in deposit account without any directions which would constitute the firm a trustee, such funds are, when invested, held by the firm as its own property and the relation between the firm on the one hand and the trustees and settlor on the other is merely that of debtor and creditor On the bankruptcy of the firm such amount cannot be recovered in full, but can only be proved as a debt The doctrine embodied in s. 51 of the Trusts Act that a trustee cannot use trust funds for his own profit does not apply where the settlor directs such use *In re Beale. Ex parte Corbridge, L R 4 Ch D. 246*, referred to. OFFICIAL ASSIGNEE OF MADRAS *v.* KRISHNASWAMI NAIDU (1909) . . . **I. L. R. 33 Mad. 154**

TRUSTEE OF TEMPLE.

See SPECIFIC RELIEF ACT, SS. 9, 42 **I. L. R. 33 Mad. 452**

TRUSTEES OF CASTE-FUNDS.

See TRUSTS ACT (II OF 1882), SS 5 AND 6. **I. L. R. 34 Bom. 467**

TRUSTEES ACT (XXVII OF 1866).

——— **s. 3.**

See MAHOMEDAN LAW—WAKF.
I. L. R. 37 Calc. 870

TRUSTEES' AND MORTGAGEES' POWERS ACT (XXVIII OF 1866).

——— **. 45.**

See MAHOMEDAN LAW—WAKF.
I. L. R. 37 Calc. 870

TRUSTS ACT (II OF 1882).

——— **ss. 5 and 6.**

See CASTE QUESTIONS, JURISDICTION OF CIVIL COURTS IN
I. L. R. 34 Bom. 467

See CIVIL PROCEDURE CODE (ACT V OF 1908), s 151 . **I. L. R. 34 Bom. 467**

See TRUSTEES OF CASTE FUNDS
I. L. R. 34 Bom. 467

——— **Caste fund**—*Trustee of caste funds—Extent of right to inspect documents—Demand and refusal—Jurisdiction of Civil Courts in caste questions—Application of Indian Trusts Act (II of 1882), ss 5 and 6, to creation of trusts of caste funds—Civil Procedure Code (Act V of 1908), s. 151.* As a result of dissensions in a Hindu caste, a suit was filed by the plaintiff, a trustee of certain caste funds and member of the Managing Committee, against the defendant, a co-trustee and the President of that Committee. The plaintiff prayed for a declaration that he had the right to inspect all books and documents of the Mahajan Managing Committee, Sub-Committee and Trustees, and for an injunction restraining the defendant from interfering with him in the exercise of such right The only two documents about which there was any real controversy were the minutes of the Sub-Committee and the correspondence file of the Mahajan. *Held*, that as trustees of the Derasar and Sadharan funds, the plaintiff had no right, either in law or by virtue of any caste rules, to the roving inspection claimed. *Bank of Bombay* v. *Suleman, I. L. R 32 Bom 466, 474*, referred to. *Held*, further, that the Mahajan fund of this caste being a purely secular fund the Indian Trust Act applied, and the plaintiff could not claim to have been made a trustee of that fund merely by virtue of a caste resolution and his own letter of acceptance. *Held*, further, on the evidence, that there had been no express demand addressed by the plaintiff to the proper quarter, and no refusal by the defendant such as would be necessary to enable a suit of this character to succeed *Held*, further, that where rights to property are not involved all matters of internal management must be left to the decision of the caste The question in dispute was in reality a question between the caste and a section, apparently a small section, of the caste led by the plaintiff, and as such it was outside the Court's jurisdiction in accordance with the decision in *Nemchand* v. *Savai-chand, I L. R. 5 Bom. 84 F. N.*,

TRUSTS ACT (II OF 1882)—*concld.*

——— **ss. 5 and 6**—*concld.*

Lalji Shamji v. *Walji Wardhman, I. L. R. 19 Bom. 507*, referred to and distinguished. *Held*, lastly, that when according to well-established principles certain questions have been removed from the jurisdiction of the Court, they cannot be brought within the jurisdiction under s. 151 of the Civil Procedure Code (Act V of 1908). JETHABHAI NARSEY *v.* CHAPSEY COOVERJI (1909)
I. L. R. 34 Bom. 467

——— **s. 36—Lease by trustee**—*Lease by trustee for term exceeding twenty-one years not void but only voidable* A lease by a trustee for a term exceeding twenty-one years is not void and illegal under s 36 of the Indian Trusts Acts, but only voidable at the instance of the *cestui que trust* KADIR IBRAHI ROWTHEN *v.* ARUNACHELLAM CHETTIAR (1909) . **I. L. R. 33 Mad. 397**

——— **s. 51.**

See TRUSTEE, POWERS OF INVESTMENT OF . . **I. L. R. 33 Mad. 154**

U

ULTRA VIRES

See ASSESSMENT **I. L. R. 37 Calc. 374**

See PROSECUTION—BYE-LAWS.
I. L. R. 37 Calc. 545

UNCHASTITY.

See HINDU LAW—MAINTENANCE.
I. L. R. 34 Bom. 278

UNDERGROUND RIGHTS.

See LANDLORD AND TENANT.
I. L. R. 37 Calc. 723

See MINERAL RIGHTS.

UNDER-TENURE.

See REVENUE SALE.
I. L. R. 37 Calc. 559

——— **Execution sale**—*Effect of sale of under-tenure by co-sharer landlord for arrears of rent—Non-registration of purchase in execution sale by the whole body of landlords—Locus standi to maintain a suit—Rent Recovery Act (X of 1859), ss. 27, 105, 106, 108, 109 and 110—Civil Procedure Code (VIII of 1859), s 259—Landlord and Tenant Procedure Act (Beng. VIII of 1865).* While under s. 105 of Act X of 1859 which contemplates a decree by the landlord, or the whole body of landlords, for an arrear of the entire rent due in respect of an under-tenure, it is the tenure that is sold, under s. 108, which does not contemplate a decree for an arrear of rent, but a decree for money due on account of a share of rent and a suit for it by only a sharer in a joint undivided estate, it is only the right, title and interest of the judgment-debtor in the under-tenure that passes. *Doolar Chand Sahoo* v. *Lala Chabeel Chand, L. R. 6 I. A. 47; 3 C. L. R.*

UNDER-TENURE—*concld.*

561, and *Shamchand Kundu* v. *Brojonath Pal Chowdhry, 12 B L. R. 484; 21 W. R. 94*, followed in principle. The purchaser of an under-tenure under s. 105 of Act X of 1859 is entitled to maintain a suit for possession against a subsequent purchaser under s 108, though he has not got his name registered in the landlord's sherista *Kristo Chunder Ghose* v. *Raj Kristo Bandyopadhya, I. L R. 12 Calc. 24*, followed. *Luckhmaram Mitter* v. *Khettro Pal Singh Roy, 13 B L. R. 146; 20 W. R. 380*, referred to. *Patit Shahu* v. *Hari Mahanti, I L R. 27 Calc. 789*, distinguished *Bichitrananda Roy* v. *Behari Lal Pandit, 5 C L J. 89*, questioned The mere fact that a person cannot succeed in a suit does not mean that he has no *locus standi* to maintain the suit It is only where the Legislature distinctly or in effect provides that certain conditions must be fulfilled to entitle a person to maintain a suit, and those conditions precedent are not fulfilled that the person has no *locus standi* to sue. NILADRI MAHANTI *v.* BICHITRANAND ROY (1910) **I. L. R. 37 Calc. 823**

UNDUE INFLUENCE.

See CONTRACT ACT (IX OF 1872), SS. 16 AND 19A . **I. L. R. 32 All. 589**

UNHYPOTHECATED PROPERTY.

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 90 . **I. L. R. 34 Bom. 540**

UNITED PROVINCES LAND REVENUE ACT (III OF 1901).

——— **ss. 56, 86—Market**—*Right to levy tolls—Cess. Held*, that the levy by the owner of a private market of market dues at so much per head for every beast sold and of rent for land occupied by stalls is not illegal. *Sukhdeo Prasad* v. *Nihal Chand, I. L R. 29 All 740* distinguished. SADANAND PANDE *v.* ALI JAN (1910) **I. L. R. 32 All. 193**

——— **ss. 111, 112—Private partition**—*Lands held under a private partition claimed by non-applicant—No question of proprietary title—Appeal* When in a suit for partition of revenue paying lands one of the non-applicants alleged that under a private partition he was in possession of certain lands and claimed those lands for himself, and the Collector in appeal ordered those lands to be given to him: *Held*, that no question of proprietary title was raised and no appeal lay to the District Judge against the order of the Collector. *Tulsi Rai* v. *Gate Ram, All. W. N. (1904) 225*, followed. *Muhammad Jan* v. *Sadanand Pande, I. L. R 28 All. 394*, distinguished. MUMAMMAD NASAR-ULLAH KHAN *v.* MUHAMMAD ISHAQ KHAN (1910) **I. L. R. 32 All. 523**

——— **ss. 142, 143, 146.**

See PENAL CODE (ACT XLV OF 1860) S. 225B . . **I. L. R 32 All. 116**

UNITED PROVINCES MUNICIPALITIES ACT (I OF 1900).

——— **s. 147**—*Municipal Board—Jurisdiction—Prosecution in respect of matter concerning which a civil suit was pending* The plaintiff to a suit against a Municipal Board was permitted by the Court to erect certain structures as specified in the decree of the Court Subsequently a dispute arose as to whether the structures which the plaintiff had erected were within or in excess of the powers given to him by the decree, and the Court decided, and the Board did not contest its decision, that the plaintiff had exceeded his rights under the decree, and that some portion of the said structures must be demolished The Board meanwhile took action against the plaintiff under s 147 of the United Provinces Municipalities Act, 1900. *Held*, that it was not open to the Board to prosecute the plaintiff in respect of the structures, pending the decision of the Civil Court and to continue the prosecution after its decision EMPEROR *v.* BALDEO PRASAD (1910) . **I. L. R. 32 All. 620**

UNLAWFUL ASSEMBLY AND THEFT.

See JUDGMENT OF APPELLATE COURT, CONTENTS OF . **I. L. R. 37 Calc. 194**

UNLAWFUL RECRUITMENT.

See EMIGRATION . **I. L. R. 37 Calc. 27**

USUFRUCTUARY MORTGAGE.

See MORTGAGE . **I. L. R. 34 Bom. 128**

——— *Transfer of Property Act (IV of 1882), s. 67—Usufructuary mortgage—Debt payable within a fixed period—Expiry of the period—Mortgagee's right to an order for sale.* Where under a usufructuary mortgage the mortgage debt is made payable within a fixed period, the mortgage is not purely a usufructuary mortgage and the mortgagee has, in the absence of a contract to the contrary, the right to an order under s 67 of the Transfer of Property Act (IV of 1882) that the property be sold after the debt has become payable *Mahadaji* v. *Joti, I. L. R. 17 Bom. 425*, and *Krishna* v. *Hari, 10 Bom L. R. 615*, explained. DATTAMBHAT RAMBHAT *v.* KRISHNABHAT (1910) . **I. L. R. 34 Bom. 462**

V

VAKIL.

——— *Vakil's right to appear before a Judge sitting on the Original Side of the High Court—Application to file warrant of attorney—Extraordinary Civil Jurisdiction—Civil Procedure Code (Act XIV of 1882), s. 635—Civil Procedure Code (Act V of 1908), ss 119, 129.* A vakil of the High Court applied before a Judge sitting on the Original Side of the Court, claiming a right to file a warrant of attorney in respect of a suit pending before the Midnapore District Court, in which a rule had been issued calling upon the plaintiffs to show cause why the suit

VAKIL—*concld.*

should not be transferred to the High Court in its Extraordinary Original Civil Jurisdiction: *Held*, that having regard to the long-continued course of practice during which *vakils* never appeared on the hearing of such applications, the present application should be refused *Held*, further, that the Civil Procedure Code of 1908 has nothing to do with a matter governed by old rules in force before 1909 *In re* A VAKIL'S APPLICATION (1910)
I. L. R. 37 Calc. 853

VALUATION.

See PRIVY COUNCIL.
14 C. W. N. 651; 872

VALUATION OF APPEAL.

——— *Court-fees Act (VII of 1870), s. 5, Sch. I, Art I, and Sch II, Art 17, cl (6)—Valuation of appeal when no amount claimed, but liability of certain properties disputed—Memorandum of appeal—Taxing Officer—Acceptance of court-fee by Deputy Registrar, finality of* Where the appellant in an appeal against a mortgage decree does not dispute the amount decreed, but raises the question of the liability of certain properties, the value of the appeal for the purpose of the court-fees is the value of such properties. Sch II, Art. 17, cl (6) of the Court-fees Act (VII of 1870) has no application to such a case *Kesavarapu Ramakrishna Reddi* v. *Kotta Kota Reddi, I. L. R 30 Mad 96, Bunwari Lal* v. *Daya Sunker Misser, 13 C. W. N. 815*, referred to. A memorandum of appeal was admitted by the Deputy Registrar of the High Court, and no question was raised as to the sufficiency of the court-fees At the hearing of the appeal, it was objected on behalf of the respondents that the court-fee was insufficient:—*Held*, that there having been no decision under s 5 of the Act by the Taxing Officer, who was the Registrar of the High Court, it was open to the respondents to raise the objection at the hearing of the appeal. *Kasturi Chetti* v *Deputy Collector, Bellary, I L. R. 21 Mad. 269*, referred to. JUGAL PERSHAD SINGH *v.* PARBHU NARAIN JHA (1910)
I. L. R. 37 Calc. 914

VALUATION OF RESIDENTIAL PROPERTY.

——— *Land Acquisition Act (I of 1894)—Compensation—Valuation of residential property—Elements to be considered—Evidence before Acquisition Officer—Practice.* The income of a property whether actual or imaginary is no doubt one of the recognised starting points for a valuation, but it is a mistake to think that it is the only element to be taken into consideration. In the case of residential property to endeavour to arrive at the market value solely on the basis of an hypothetical rent, may work grave injustice to the owner. There are commodities which may possess a value in the market not for the return they give on capital invested but for the advantages and enjoyment which accrue from their possession. Residential property—in the sense of property which a

VALUATION OF RESIDENTIAL PROPERTY—*concld.*

purchaser wishes to acquire for his own residence—is such a commodity The first question to determine is whether there is a demand, and if there is a demand the original cost is the most important element for consideration. It is the duty of legal practitioners attending before the Acquisition Officer to assist him in arriving at a valuation by putting before him all the information and materials at their disposal. *In the matter of* LAND ACQUISITION ACT *In the matter of* GOVERNMENT AND SUKHANAND (1909) . . **I. L. R. 34 Bom. 486**

VALUATION OF SUIT.

See ADOPTION . **I. L. R. 37 Calc. 860**
See APPEAL . . **14 C. W. N. 343**

——— **Suit to set aside Adoption**—*Munsif, jurisdiction of—Forum—Practice* According to a long-standing practice, a suit to set aside an adoption is, for the purposes of jurisdiction, incapable of valuation: and it is competent to the plaintiff in such a suit to value the relief claimed, and that valuation determines the forum to decide the suit *Aklemannessa Bibi* v. *Mahomed Hatem, I. L. R 31 Calc 849*, commented on *Jan Mahomed Mandal* v *Masha Bibi, I. L. R 34 Calc. 352*, referred to PRAHLAD CHANDRA DAS *v.* DWARKA NATH GHOSE (1910)
I. L. R. 37 Calc. 860

VALUE-PAYABLE POST.

See POST OFFICE ACT (VI OF 1898), SS. 35, 64, 74 . . **I. L. R. 33 Mad. 511**

VATAN.

See HINDU LAW—INHERITANCE.
I. L. R. 34 Bom. 321

See LIMITATION ACT, 1877, SS 22, 28.
I. L. R. 34 Bom. 91

——— *Regulation XVI of 1827—Transfer of Property Act (IV of 1882), s. 43—Deshgat Vatan—Mortgage—Subsequent enlargement of the mortgagor's estate—Private property—Mortgagee's claim to hold the property against the mortgagor's heir* A mortgagee of Deshgat Vatan knew that the property which was mortgaged to him was land appurtenant to an hereditary office and inalienable beyond the life-time of the incumbent. Subsequently to the mortgage the estate of the mortgagor was enlarged so as to be alienable in the life-time of the holder. After the enlargement, the mortgagee having claimed to hold the property against the heir of the mortgagor: *Held*, that the mortgagee took only such estate as the holder of the Vatan property was capable of conveying to the mortgagee at the time of the mortgage and that the mortgagee could not claim to retain the property in virtue of the mortgage after the death of the mortgagor. GANGABAI *v.* BASWANT (1909) . **I. L. R. 34 Bom. 175**

W

WAJIB-UL-ARZ—*concld.*

——— **Contract or custom.** The pre-emptive clause of a wajib-ul-arz ran as follows :—"*Kor muqadma haq shafa ka dair nahin hua; aiyanda ko jari rakhna haq shafa ka ham ko manzur hai.*" *Held*, on a construction of the wajib-ul-arz, that these words did not denote a record of a custom but merely of a contract to take effect in the future. *Tasadduq Husain Khan* v *Ali Husain Khan, All. Weekly Notes (1908) 121*, followed. *Hazari Lal* v *Durga Prasad, I. L. R 32 All. 187*, distinguished. KANCHAN SINGH *v* MANI RAM (1910) . . . **I. L. R. 22 All. 201**

WAKF.

See CIVIL PROCEDURE CODE, 1908, SCH. II AND S. 92 . **I. L. R. 32 All. 503**

See MAHOMEDAN LAW—ENDOWMENT.

See MAHOMEDAN LAW—WAKF.
I. L. R. 37 Calc. 870
I. L. R. 33 Mad. 118

See SPECIFIC RELIEF ACT (I OF 1877), S 42.
I. L. R. 32 All. 631

——— **Mahomedan Law—Private trust** *—Gift—Essential elements for validity—Power of revocation—General principles—Vested remainders* In 1902 a Shia Mahomedan by deed conveyed certain immoveable property to himself and other trustees for himself for life and after his death for the payment of annuities to his widow and daughter and the balance to certain charities Further clauses provided that on the death of his widow her annuity was to go to certain other charities and that on the death of his daughter a lump sum was to be given to her son. A further proviso reserved power to the settlor at any time to revoke all or any of the above trusts In 1908 he revoked the trust, and executed a mortgage of the property. In 1909 he died and receivers of his estate were appointed His daughter then filed a suit for a declaration, *inter alia*, that the revocation and subsequent mortgage were invalid, and that the original trusts still subsisted. *Held*, that the conveyance in 1902 was invalid Looked at from the standpoint of the Mahomedan law-giver, a private trust would be no more than a private gift *inter vivos* through the medium of the third party, and therefore subject to all the conditions of a valid gift, but, *quære*, whether private trusts were known to Mahomedan law *Bunoo Begum* v. *Mir Abed Ali, I L R. 32 Bom 172*, discussed and distinguished JAINABAI *v.* R. D. SETHNA (1910) . **I. L. R. 34 Bom. 604**

WAQF.

See WAKF.

WARRANT.

——— **legality of—**

See PENAL CODE (ACT XLV OF 1860), S. 186 . . **I. L. R. 37 Calc. 122**

WARRANT OF ATTORNEY.

——— **application to file—**

See PRACTICE . **I. L. R. 37 Calc. 853**

WARRANTY.

See CONTRACT . **I. L. R. 37 Calc. 334**

WIDOW.

See HINDU LAW—MAINTENANCE
I. L. R. 34 Bom. 278

See HINDU LAW—WIDOW
I. L. R. 34 Bom. 165

——— **gift by, to daughter—**

See HINDU LAW—GIFT
I. L. R. 37 Calc. 1

WILL.

See HINDU LAW—WILL
I. L. R. 32 All. 337

See HINDU WILLS ACT (XXI OF 1870), SS. 2 AND 5 . **I. L. R. 34 Bom. 506**

See LIMITATION ACT (XV OF 1877), SS. 5 AND 7 . **I. L. R. 34 Bom. 589**

See MAHOMEDAN LAW—PROBATE
I. L. R. 37 Calc. 839

See OUDH ESTATES ACT (1 OF 1869), SS 13, 16 AND 17 . **I. L. R. 32 All. 227**

See PROBATE AND ADMINISTRATION ACT, S. 81 . . **I. L. R. 34 Bom. 459**

See SUCCESSION ACT, SS. 82, 187
I. L. R. 33 Mad. 91

1. CONSTRUCTION OF WILL.

——— *Executor—Testator's direction to carry on his trade—Loss suffered in the course of the business—Mortgage—Liability of the executor—Testator's assets liable.* One Gordhandas made a will and died leaving him surviving his widow, a daughter and her husband and two grandsons by the daughter. Under the will the testator appointed his widow and the daughter's husband executrix and executor and directed among other things that in order to perpetuate his name his business should be carried on by the executor so long as it could be carried on at a good profit but, should it appear that the trade will suffer so as to destroy his reputation, the executor should stop it. At the time of his death the testator possessed, *inter alia*, a cotton ginning factory. The executor and executrix carried on the business in the testator's name for some time and having found that large liabilities were incurred in the course of the business the factory was mort-

WILL—*contd.*

1. CONSTRUCTION OF WILL—*concld.*

gaged to *J* with possession. The mortgage was executed by the testator's widow as owner of the firm of Gordhandas and by her daughter. The fact of the will was denied in the mortgage conveyance. The ladies executed the mortgage by affixing their marks and their names were written by the executor. *J* sued the mortgagor ladies and the executor to recover the mortgage-debt and obtained a decree. The executor died while the suit was pending. The mortgage property was sold under *J*'s decree and was purchased by him at the court-sale. In the meanwhile the beneficiaries under the will, that is, the two grandsons of the testator and the sons of the deceased executor, brought a suit against *J* for a declaration that the property was not liable to be sold under the defendant's mortgage-decree and that the defendant had obtained by his purchase no right as against the plaintiff's rights in the property. *Held*, dismissing the suit, that the mortgage was by one member of the firm with the consent and informal co-operation of the undisclosed partner, the executor, who had the implied authority of the testator to deal with the factory in the ordinary course of business. The mortgage was therefore valid and binding on the executor as principal. *Juggeewundas Keeka Shah* v. *Ramdas Brijbookun-Das, 2 Moo. I. A. 487*, followed. A mortgage by a trader under a testamentary trust of the testator's property is referable to his implied authority as a trustee and not to his position as executor. *Devitt* v. *Kearney, 13 L R. Ir 45*, followed. An executor carrying on the trade of his testator under a testamentary trust is liable personally to the trade creditors and is entitled to use as a trader the trade assets of the testator He does not violate his trust by carrying on the trade in conjunction with his co-executor who is not named as a trade trustee The trustee, though personally liable for the debts which he contracts in the course of his business, has a right to be paid out of the specific assets appropriated for that purpose and the trade creditors are not to be disappointed of payment so far as the assets so appropriated are concerned. JETHABHAI *v.* CHOTA LAL (1909) . . **I. L. R. 34 Bom. 209**

2. PROBATE.

——————— *Civil Procedure Code (Act XIV of 1882), s. 103, if applies to probate proceedings—Probate and Administration Act (V of 1881), s. 83—Dismissal of application for probate for default—Executor if may propound Will again —Res Judicata—Deterrent costs sufficient remedy against vexatious conduct.* A refusal to admit a will to probate is conclusive of the facts necessary to support the decision. But if probate has been refused not on the merits but merely by reason of the insufficiency of some matter of form or procedure, there is no adjudication that the instrument is not entitled to probate and therefore it may be again propounded. If therefore an application

WILL—*contd.*

2. PROBATE—*concld.*

for probate by the executor of a will has been dismissed for default, that fact itself cannot debar an application by any other person claiming an interest under the will, and therefore, necessarily also, by the executor himself. An executor presenting an application for probate of a will cannot be regarded as a plaintiff who brings a suit in respect of a cause of action S. 103 of the Civil Procedure Code (Act XIV of 1882) would therefore be in terms inapplicable to such an application. *Ganesh Jagannath* v *Ram Chandra, I. L. R 21 Bom. 563*, relied on. RAMMANI DEBI *v.* KUMUD BANDHU MOOKERJEE (1910) . . **14 C. W. N. 924**

3. REVOCATION OF WILL.

——————— *Mutual and joint wills—Power of survivor of joint will to revoke—Survivor can revoke unless he derives some benefit under the will* Where two persons agree to make mutual wills, and one of them dies, the survivor can revoke his will unless he has taken some benefit under the will of the deceased testator. *Stone* v. *Huskins*, [*1905*] *P. 194*, referred to MINAKSHI AMMAL v. VISWANATHA AIYAR (1909) **I. L. R. 33 Mad. 406**

4. VALIDITY OF WILL.

1 ——————— **Test**—*Signature on one page out of several pages of a Will.* If an instrument is on the face of it of a testamentary character, the mere circumstance that the testator calls it irrevocable, does not alter its quality; the principle test as to whether the instrument is a will, is whether the disposition made takes effect during the lifetime of the executant of the deed or whether it takes effect after his death. *Rammoni* v *Ramgopal, 12 C. W. N. 942*, relied on. *Sita Koer* v. *Deonath, 8 C. W. N. 614, Chaitanya* v. *Dayal, 9 C. W. N. 1021*, distinguished. One signature made with the intention of authenticating the whole instrument is sufficient though a will be contained in several sheets of paper. SAGORE CHANDRA MONDOL *v.* DIGAMBAR MONDOL (1909) **14 C. W. N. 174**

2. ——————— **Caveat**—*Caveators withdrawing on propounders agreeing to pay an allowance—Personal liability of executors—Settlement of bonâ fide dispute—Enforcement of agreement if opposed to public policy—Registration.* Where on the executors propounding a will, the widows of the deceased entered caveat, but before the case came on for hearing, the parties settled their differences and the caveators withdrew their objections on the executors undertaking, *inter alia*, to pay them a fixed monthly allowance for performing religious acts, although the will purported to provide for grants of money for purposes only out of the surplus income: *Held*, affirming Doss, *J.*, that the agreement having been entered into an order to settle a *bonâ fide* dispute, was enforcible, and as

Z

CALCUTTA
SUPERINTENDENT GOVERNMENT PRINTING, INDIA
8, HASTINGS STREET